

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1321 of 2016**

Ku. Faiza Khan, D/o. Mohd. Imran Khan, aged about 6 years, Minor through legal guardian mother Smt. Shaiasta Parveen wife of Mohd. Imran Khan, R/o. Infront of Masjid, Subhash Nagar, Durg, Tahsil and District Durg (C.G.)

---- Appellant/claimant**Versus**

1. Karamveer Singh, son of Keval Lal Singh, R/o. Sadak No.14, LIG-12, Shanti Nagar, Bhilai, District Durg (C.G.)

(Driver of Vehicle No. C.G.10, F-6903)

2. Ashok Mehara, son of late Pyare Lal, aged about 55 years, Shop No. K-4/16, Sector-11, Zone Fish Market, Kursipar, Bhilai, District Durg (C.G.).

(Owner of Vehicle No. C.G. 10, F-6903)

3. National Insurance Company Limited, Address G.E. Road, Power House Bhilai, through : Branch Office, Akash Ganga, Supela, Bhilai, District Durg (C.G.)

(Insurer of Vehicle No. C.G. 10, F-6903)

---- Respondents

For Appellant	: Shri Syed Majid Ali, Advocate
For Respondent No. 3	: Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05.03.2019

01. Heard on appeal aswell as on IA No. 02, application for taking documents on record under order 41 Rule 27 of C.P.C.

02. Learned counsel appearing for the appellant/injured submits that he has filed an application for taking documents on record under Order 41, Rule 27 of the CPC, by which the medical bills produced by the claimant through her natural guardian are also verified by the respondent No. 3/Insurance Company, which may be directed to be taken on record by accepting the medical bills of Rs. 64,657/-.

03. In the facts & circumstances of the case, application under Order 41, Rule 27 of the CPC for taking documents on record filed by the claimant is allowed, the consent of both the parties the medical bill of Rs. 64,657/- as admitted documents, considered for the purpose of assessment of compensation.

04. This appeal is by the claimant, through natural guardian mother Smt. Saista Parveen, against the award dated 10.05.2016 passed by Fourth Additional Motor Accident Claims Tribunal, Durg in Claim Case No.78/2015 awarding total compensation of Rs.3,34,500/- alongwith interest @ 6 % per annum from the date of application till realization, fastening liability on the respondents jointly and severely.

05. Facts of the case leading to filing of the claim petition are that in the intervening night of 5/6-02-2015 at about 12.30 pm, the appellant/injured along with her father Mohd. Imran and other family members was coming from Raipur to her resident at Durg in the car bearing registration No. CG-04 DB-9933 and when they

reached near Nehru Nagar Square, respondent No. 1, while driving the offending vehicle bearing registration No. CG-10 F-6903, rashly and negligently, dashed the car, as a result of which, she sustained grievous injuries including permanent disability to the extent of 12%. The vehicle is owned by Non-applicant No. 2 and insured with Non-applicant No. 3.

06. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

07. Learned counsel for the appellant submits that Tribunal has fallen in error in assessing the notional income of claimant as Rs. 2,500/- per month i.e. Rs.30,000/- per annum only whereas it should be considered as Rs. 5,000/- per month i.e. Rs.60,000/- per annum. He also submits that due to injuries sustained by the claimant/injured in the motor accident, she suffered grievous injuries resulting into the permanent disability to the extent of 12% as per disability certificate (Ex.P-61) issued by the Medical Board.

08. On the other hand, learned counsel for the respondent No. 3/Insurance Company submits that the Tribunal has rightly considered the income, medical expenses and other miscellaneous expenses incurred by the claimant and awarded sufficient amount which needs no interference by this Court however, he submits that the Tribunal has wrongly awarded 50%

towards future prospect to the claimant whereas considering the age of the claimant i.e. 6 years, the nature of his job in view of the judgment rendered by the Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Prany Sethi, (2017) 16 SCC 680**, 40% towards future prospect as such the award needs to be modified to the above extent.

09. I have heard learned counsel appearing for the parties and perused the impugned award including record of the Claims Tribunal.

10. No counter appeal is filed by the Insurance Company as submitted by learned counsel for both the parties.

11. It is undisputed fact that the liability to pay compensation upon the respondent Nos. 1 to 3 jointly and severally and no counter appeal has been filed by the Insurance Company. According to the disability Certificate (Ex. P-61) issued by Dr. Akhilesh Yadav (AW3), the claimant has sustained permanent disability to the extent of 12% assessed by the Tribunal is just & proper. The notional Income should be considered as Rs. 5,000/- per month in place of Rs.2,500/- per month as assessed by the Claims Tribunal prevalent at the relevant time. Further, considering the age of the injured i.e. 06 years, the claimant is also entitled for 40% addition to his annual income towards future prospect. Further considering the age of the claimant she is entitled for Rs. 1,00,000/- for the loss of marital aspect and Rs. 20,000/- towards

future treatment. Thus, considering the age of the claimant, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:.

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.5,000/- per month.	Rs.60,000/- per annum
02.	40 % towards future prospect	Rs. 60,00+24,000/- per annum = Rs.84,000/-
03.	Loss of earning @ 12%	Rs10080/-
04.	Multiplier of 15 to be applied	Rs 1,51,200/-
05.	Towards Medical expenses	Rs.1,51,500+64,657= Rs.2,16,157/-
06.	Towards pain and suffering	Rs.50,000/- (as applied by the Tribunal)
07.	Towards special diet	Rs.10,000/- (as applied by the Tribunal)
08.	Towards transportation	Rs.10,000/- (as applied by the Tribunal)
09.	For attendant	Rs.27,000/- (as awarded by the Tribunal)
10.	Total other expenses	Rs.5,000/-
12.	Towards marriage aspect	Rs. 1,00,000/-

13.	Towards future treatment	Rs. 20,000/-
14.	Total compensation	Rs.5,89,357/-

Since the Tribunal has already awarded Rs.3,34,500/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.2,54,857/- with interest @ 6% per annum from the date of application till realization. Rest of the conditions mentioned in the award shall remain intact.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya
Judge