

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 1026 of 2013**

- Rukhmani Bai W/o Late Kishan Chakradhari Aged About 35 Years For Minor Ku. Permishwari Age about 12 years, D/o Lt. Kishan Chakradhari, Cast- Kumhar, R/o Vill. Sambalpur, P.S. & Tah. Bhanupratappur, Distt. North Bastar Kanker (C.G.)

**---- Appellant**

**Versus**

1. Raghuveer Singh, S/o Ram Singh Aged About 36 Years, R/o Vill. Bamhani, P.S. Mahamaya, Civil & Revenue District Durg (C.G.)
2. Rameshwer Sahu S/o Lt. Manrakhanlal Aged About 53 Years, Cast-Teli, R/o Industrial Ward Nagar, Through Dhamtari Roadways, New Bus Stand, Dhamtari, District Dhamtari (C.G.)
3. Reliance General Insurance, Shop No.412, 413 Fourth Floor, Ravi Bhavan, Jaistambh Chowk, Civil & Revenue District Raipur (C.G.)

**---- Respondents**

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|-------------------------|---|-----------------------------|
| For Appellant           | : | Mr. Rakesh Thakur, Advocate |
| For Respondent No.1 & 2 | : | None                        |
| For Respondent No.3     | : | Mr. S.S. Rajput, Advocate.  |

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**Order On Board By Hon. Shri Justice Parth Prateem Sahu**

**26/06/2019**

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 29.11.2012 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker (henceforth 'the Claims Tribunal') in Claim Case No.42/12 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs.3,46,160=56 paise with interest @ 6% p.a. in an injury case.
2. Facts of the case, in brief, are that on 3.5.2009 claimant Kumari Parmeshwari was going to Sambalpur in bus bearing registration No.CG05-D-0865 and when said bus reached near Jaali Culvert on Bhanupratappur Road, it met with an accident due to rash and negligent driving by its driver. In the said accident claimant suffered

grievous injuries over her hand. Immediately after accident, claimant was taken to Community Health Centre, Bhanupratappur where she was given primary treatment and thereafter referred to Medical College Hospital, Raipur for better treatment where during the course of treatment her right hand was amputated above elbow. Claimant through her mother filed claim application before competent Claims Tribunal claiming Rs.14,50,000/- as compensation on the ground that due to amputation of her right hand, she became permanent disabled.

3. Non-applicant No.1- driver of offending vehicle submitted his reply opposing claim application and pleaded that on the date of accident, he was driving offending vehicle as per traffic rules in a normal speed and therefore he cannot be held liable for compensation.
4. Non-applicant No.2-owner of offending vehicle did not file reply to claim application.
5. Non-applicant No.3 Insurance Company submitted its reply to claim application and took a defence that on the date of accident offending vehicle was being plied in violation of conditions of insurance policy as on the date of accident non-applicant No.1-driver was not having valid and effective driving license and therefore insurance company is not liable to indemnify insured.
6. On appreciation of pleadings and evidence placed on record by respective parties, in particular disability certificate (Ex.A-37) issued by District Medical Board, Kanker, held that claimant suffered 80% permanent disability due to amputation of her right hand above elbow and awarded total compensation of Rs.3,46,160/-.
7. Learned counsel for appellant submits that Claims Tribunal erred in awarding meagre amount of compensation ignoring percentage of permanent disability suffered by claimant, who was 11 years old on the date of accident. He further argued that Claims Tribunal committed error in not awarding any amount under the head of "non-pecuniary damages".
8. Per contra, learned counsel for insurance company submits that the

amount of compensation awarded by Claims Tribunal is based on proper appreciation of evidence & material available on record and the same cannot be said to be on lower side or meagre amount.

9. I have heard learned counsel for the parties and perused the record.
10. In the case at hand, it is not in dispute that claimant/appellant herein suffered injury in a motor accident resulting in amputation of her right hand above elbow. Therefore, the only question which arises for consideration of this Court is whether amount of compensation awarded by Claims Tribunal is just & proper or on lower side?
11. Perusal of impugned award makes it clear that for the purpose of calculating amount of compensation, the Claims Tribunal has assessed loss of earning at Rs.1,80,000/- by taking annual income of claimant on notional basis i.e. Rs.15000/-. Fixation of annual income of deceased at Rs.15,000/- by the Claims Tribunal appears to be on lower side for the reason that schedule appended to Section 163A of the Act of 1988 was brought into force in the year 1994 wherein notional income was fixed by taking into consideration price index prevailing at that point of time, whereas accident in question occurred about about 15 years therefrom and during this period i.e. between 1994 and 2009, there is sky-rocketing prices/rate of inflation and fall in value of rupee which have materially affected price index. Hon'ble Supreme Court in the matter of Kishan Gopal & an v. Lal & ors reported in (2014) 1 SCC 244 has dealt with issue of fixation of notional income for non-earning member and held thus:-

38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive

would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of *Sarla Verma v. Delhi Transport Corporation* (3), the multiplier of 15 can be applied to the multiplicand. Thus,  $30,000 \times 15 = 4,50,000$  and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Keral SRTC v. Susamma Thomas* (4), which is referred to in *Lata Wadhwa's* case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.

12. A bare reading of above judgment will make it clear that the Hon'ble Supreme Court considering the fact that value of rupee has come down drastically from the year 1994, has fixed notional income of a non-earning deceased at Rs.30,000/-. In the case at hand, accident took place in the year 2009 and therefore considering increase in price index & inflation rate between 1994 to 2009 and further considering the fact at the time of accident deceased was 11 years old, this Court is of considered view that it would be just and proper to take annual income of deceased at Rs.30,000/- on notional basis, instead of Rs.15,000/- as determined by Claims Tribunal. As on the date of accident, claimant/appellant was aged about 11 years and due to injuries sustained in said accident, she has suffered 80% permanent disablement, therefore, the Claims Tribunal ought to have added 40% of assessed annual income of injured towards future prospects. By doing so, the annual loss of income of injured claimant comes to Rs. 42,000/- ( $30000+12000$ ). After applying multiplier of 18, as applied by Claims Tribunal, loss of income works out to a sum

of Rs.6,30,000/- (42000x15). Since the disability suffered by claimant/appellant is fixed at 80%, the compensation amount has to be calculated by apportioning amount to 80% disability and accordingly total compensation under the head of loss of earning capacity works out to Rs.5,04,000/- (80% of 6,30,000). Thus, amount under the head of loss of earning capacity is enhanced from Rs.1,80,000/- to Rs.5,04,000/-.

13. Considering the amputation of right hand of claimant above elbow resulting in 80% functional disablement due to which she cannot live like a normal person and has to remain dependent upon others for certain activities of life always and will also not be able to enjoy amenities of life properly in future, I am inclined to award a sum of Rs.1,00,000/- under the head of loss of amenities in life.
14. The Claims Tribunal has not awarded any amount under the head of conveyance though bill issued by a private taxi operator has been placed on record. In the cause title of claim application claimant/appellant is shown to be resident of village Sambalpur, Tahsil Bhanupratappur, District North Bastar Kanker. From the documents Ex.A-13 to Ex.A-22 & Ex.P-32 it is clear that claimant/appellant was treated at Medical College Hospital, Raipur where her right hand above elbow was amputated. True it is that claimant/appellant failed to examine the person who had issued vehicle fare receipts, but considering the medical documents placed on record by claimant/appellant and place of her residence, it appears that during the period of her treatment, she must have incurred some expenses on conveyance and therefore I deem it fit to award an amount of Rs.4,000/- towards conveyance.
15. The Claims Tribunal has also not awarded any amount towards attendant on the ground that claimant did not examine any witness to establish that she was attended by some person during the period of her treatment. Perusal of medical bills/ prescriptions (Ex.A-12 to Ex.P-32) show that claimant was under continuous treatment in different hospitals from the date of accident till 24.6.2009. Thus, keeping in mind nature of injuries, period of treatment and age of claimant, who was of tender age at the relevant time, I am of the view

that during treatment period i.e. for about two months, claimant/appellant must have needed an attendant to look-after her. Therefore, claimant/appellant is also entitled for a sum of Rs.7,000/- under the head of attendant.

16. On the basis of aforesaid discussions, the compensation awarded by the Claims Tribunal is recomputed as under:-

| Sl.N | Compensation under various heads |          | Awarded by this Court         |
|------|----------------------------------|----------|-------------------------------|
| 1.   | Loss of future income            |          | Rs.5,04,000/-                 |
| 2.   | Loss of Amenities                | :        | Rs.1,00,000/-                 |
| 3.   | For Pain & Sufferings            | :        | Rs.50,000/-<br>(maintained)   |
| 4.   | For loss of marriage prospects   | :        | Rs.1,00,000/-<br>(maintained) |
| 5.   | Medical Expenses                 | :        | Rs.6,160/-<br>(maintained)    |
| 6.   | For special diet                 | :        | Rs.10,000/-<br>(maintained)   |
| 7.   | For Conveyance                   | :        | Rs.4,000/-                    |
| 8.   | For attendant                    | :        | Rs.7,000/-                    |
|      | <b>Total</b>                     | <b>:</b> | <b>Rs.7,81,160/-</b>          |

17. Thus, total amount of compensation for which claimant/appellant is entitled to receive comes to Rs.7,81,160/-. Since the Claims Tribunal has already awarded Rs.3,46,160/-, after deducting the same, claimant/ appellant is now entitled for an amount of Rs.4,35,000 /-. This amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

18. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-  
(Part Prateem Sahu)  
Judge

roshan/-