

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 530 of 2014

- Ku. Sunita Bajpai D/o Shri Basant Kumar Bajpai, aged about 41 years, R/o Mungeli Naka, P.S. Civil Line Bilaspur, Tahsil & District Bilaspur (C.G.)

---- Appellant/Claimant

Versus

1. Pardeshi Lal Baghel S/o Jodhan Baghel, aged about 40 years, R/o Village Sendri, Thana Koni Tahsil & District Bilaspur (C.G.)
2. Anirudh Singh S/o Krishna Singh (Truck owner), R/o Kotmisonar, Thana Akaltara, Tahsil Janjgir, District Janjgir-Champa (C.G.)
3. The New India Assurance Co. Ltd. Through Branch Manager, The New India Assurance Co. Ltd., Rajendra Nagar Chowk Now, Shri Ram Trade Centre, Near Old Bus Stand, P.S. Tarbahar, Bilaspur Tahsil & District Bilaspur (C.G.)

---- Respondents/Non-applicants

For Appellant : Shri Avinash Mishra, Advocate

For Respondents No. 1 & 2 : None

For Respondent No.3 : Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.02.2019

1. This appeal is by the Appellant/Claimant against the award dated 30.10.2013 passed by the Second Additional Member, Bilaspur (C.G.) to the First Additional Motor Accident Claims Tribunal in Claim Case No. 50 of 2013 awarding total compensation of Rs.2,01,345/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Respondents/non-applicants.

2. The facts of the case are that on 30.04.2003, Appellant/Claimant- Ku. Sunita Bajpai aged about 34 years, a teacher in High School, Pandhi was going to attend her duty with Anju Pathak by Scooty Moped bearing registration No. CG-10/ZE/2331, the scooty was being ridden by Anju Pathak and Ku. Sunita Bajpai was the pillion rider of the same. When they reached near Mahamaya Chowk Sarkanda from Nehru Chowk, at about 08:00 am, one offending vehicle Truck

bearing registration No. CG-11/ZB/0640 which was coming in a rash and negligent manner from Ratanpur side and being driven by non-applicant No.1, dashed the scooty. As a result thereof, Anju Pathak was crushed by the offending Truck and Ku. Sunita Bajpai sustained grievous injuries on various parts of the body and she fell unconscious on the spot. At the time of accident, the offending vehicle Truck was owned by non-applicant No.2 and insured with non-applicant No.3.

3. On claim petition being filed by the Claimant under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. No counter appeal has been filed by the Respondents as submitted by both the parties.

5. Learned counsel for the Appellant/Claimant submits that the Claimant is unmarried and she was already handicapped by right leg due to polio. Due to accident, her left leg got fractured and after operating, an iron rod was fitted. He further submits that as per Ex.-P/13, a certificate issued by District Medical Board, Bilaspur, the Claimant suffered 75% severe disability which was proved by the Claimant and her disablement has seriously affected her marital prospects and service prospects. He also submits that amount under the other heads like pain & suffering, future treatment and attendant should have been awarded but the Tribunal has not awarded any amount under these heads. He further submits that the Tribunal has not awarded any compensation for loss of amenities, loss of marital prospects and loss of expectation of life.

6. On the other hand, learned counsel for the Respondent No.3/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.

8. As per Ex.-P/7, wound certificate, the claimant sustained injury on left thigh

and there were comminuted fractures of lower shaft humerus left, femur midshaft left, with severe degloving of thigh skin and subcutaneous tissue with multiple rib fracture left with pneumothorax. As per Ex.-P/8, the Claimant was treated by Dr. B.D. Chatterjee from 30.04.2003 to 29.05.2003 and he found crush injury of her left thigh and fracture of left humerus, she is left with a permanent disability of the left thigh due to loss of muscle and skin and will require a stick to walk normally.

9. The Claimant was examined as AW-1. She has stated as to how she suffered injuries. She was hospitalized in Apollo Hospital, Bilaspur for about one month. The Claimant stated that she was already handicapped by right leg due to polio and due to accident, her left leg was fractured and after operating, an iron rod was fitted. She further stated that her both legs are disabled. She stated that she is a teacher and she has been transferred to High School, Kududand and she goes to school by rickshaw and sitting on a rickshaw with the help of a person and taking down from rickshaw with the help of peon of the school and she feels difficulty in performing physical work.

10. AW-5 Dr. S.S. Bhatiya was one of the members of the team of doctors who had examined the injured Claimant and has issued disability certificate Ex.-P/13 in favour of the Claimant stating therein that she has suffered 75% severe disability.

11. While assessing compensation, especially under the Motor Vehicles Act, the Tribunals are statutorily responsible for fixing a compensation which should be just and proper, commensurate with the injury or loss, as the case may be, suffered by the claimants. Although compensation for loss of limbs or life can not be weighed in golden scales, it has to be kept in mind that the compensation is not expected to be a windfall for the victim/claimant. It should be "just" and not a bonanza; not a source of profit, but at the same time, should not be a pittance. There can be no straight jacket formula governing all cases for measuring the value of human life or limbs in terms of money. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any, of each case. Every method or mode adopted for assessing compensation has to be considered in the background of

“just” compensation which is the pivotal consideration. Though a wide discretion is vested in the Tribunal in respect of awarding compensation, but such assessment/determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression “just” denotes equability, fairness and reasonableness, and non-arbitrariness. If it is not so, it can not be just.

12. In the case on hand, the Tribunal without proper appreciation of the pleadings and evidence, in a mechanical manner has awarded a sum of Rs.2,01,345/- which is shockingly disproportionate to the damage suffered by the Claimant. The finding recorded by the Tribunal for awarding such compensation is *per se* erroneous and perverse.

13. Considering the facts and circumstances of the case, in particular the statement of the Claimant, Ex.-P/7, Ex.-P/8 and disability certificate (Ex.-P/13), the Claimant has successfully proved that on account of the accident she has suffered 75% severe disability and she was already handicapped by right leg due to polio, therefore, her service prospects has also affected.

14. Undisputedly, the Claimant has suffered severe disability to the extent of 75%, thereby depriving her of reasonable enjoyment in life. She has undergone treatment for a period of one month and suffered pain and mental agony. It is really difficult to assess the exact amount of compensation for the pain and agony suffered by her. No amount of compensation can restore the physical frame of the Claimant. This is why it has been said by the Hon,ble Supreme Court in plethora of cases that whenever any amount is determined as compensation payable for any injury suffered during an accident, the object is to compensate such injury so far as money can compensate, because it is impossible to equate the money with the human sufferings and personal deprivations. Money can not renew a broken and shattered physical frame.

15. Considering the Claimant was already handicapped by right leg due to polio, nature and extent of the injuries suffered by her, the pain and severe disability

caused thereby as also the loss of reasonable enjoyment of future life which she had to undergo and the fact that her disablement has seriously affected her marital prospects and service prospects, further expenses is required to be incurred on her future treatment as well as attendant, in the opinion of this Court the following compensation would meet the ends of justice and thus, the Claimant/Appellant is held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	For medical expenses	Rs.1,36,345/- (as awarded by the Tribunal)
2.	For disablement	Rs.50,000/- (as awarded by the Tribunal)
3.	For special diet	Rs.15,000/- (as awarded by the Tribunal)
4.	For pain & suffering	Rs.50,000/-
5.	For attendant	Rs.15,000/-
6.	For loss of amenities and loss of marital prospects	Rs.2,00,000/-
7.	For loss of expectation of life	Rs.50,000/-
8.	For future treatment	Rs.50,000/-
9.	Affected service prospects	Rs.1,00,000/-
	Total Compensation	Rs.6,66,345/-

16. Since the Tribunal has already awarded Rs.2,01,345/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.4,65,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

18. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge