

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 334 of 2013**

1. Phoolmati W/o Maso aged about 50 years, R/o Village Bharwapadar Bastar Police Chowki Bastar P.S. Kotwali Jagdalpur District- Bastar (C.G.).

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

1. Dholuram Bharati S/o. Lakhichand Bharati aged about 25 years, R/o. Village Naikgudapara Bastar Police Chowki Bastar P.S. Kotwali Jagdalpur District Bastar (C.G.) (Driver cum owner of the vehicle).
2. The National Insurance Co. Ltd. Through The Branch Manager, Jagdalpur District Bastar (C.G.) (Insurer).

---- Respondents

For Appellant	: Shri A. L. Singroul, Advocate
For Respondent No.2	: Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

04.04.2019

1. Heard on IA No. 3, application for amendment in memo of appeal and with the consent of the parties the matter is heard finally.
2. Learned counsel for the appellant submits that this is claimant's appeal seeking enhancement of the amount under award and in which he wants to carry out amendment in the memo of appeal as the claimant was the third party for the Insurance Company, therefore, as per terms & conditions of the insurance policy the Insurance Company is held liable to pay compensation to the claimant.
3. Learned counsel for the respondent vehemently opposes the

contention made by learned counsel for the appellant and submits that after long delay of five years it is not permissible to add a new ground in the memo of appeal by amendment application.

4. Heard learned counsel appearing for the parties on the IA No. 3, application for amendment in the memo of appeal.

5. Looking to the issue sought by the appellant/Insurance Company on the question of settled principle of law and the fact that the claimant was the third party for the Insurance company, I am of the view that the amendment sought by the appellant counsel appears to be just & proper and it is allowed accordingly.

6. This appeal is by the claimant/injured against the award dated 07.02.2013, passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No.109/2011 awarding total compensation of Rs. 22,428/- along with interest @ 8 % per annum from the date of filing of claim petition till its actual payment, fastening liability upon the Non-applicant No. 1/owner of the offending vehicle while exonerating the Insurance Company as it could establish the violation of policy conditions.

7. As per averments in the claim petition, on 14.12.2010, at about 12.30 pm, injured/claimant was coming with her friends from her house to Bastar Chowki, at that point of time, non-applicant No. 1- Dholuram Bharti while riding the motor-cycle bearing registration No. CG17-K.B./5791 rashly & negligently, dashed the claimant/injured from back side as a result of which the appellant/claimant suffered grievous injuries on her right leg and other parts of the body resulting into permanent disability to the extent of 50%.

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

9. No counter appeal has been filed by the respondent/insurance company.

10. Learned counsel for the appellant/claimant submits that as per statement and disability certificate (Ex. P/17) issued in favour of claimant/injured by Dr. Lakhan Thakur (AW 3), Member of District Medical Board, Jagdalpur the claimant sustained grievous injuries resulting into permanent disability to the extent of 50% but the learned Tribunal did not consider any functional disability and awarded a meagres sum of Rs. 22,428/- as compensation to the claimant. However, the amount of compensation awarded by the Tribunal is not proportionate to the injuries caused to the claimant as no amount towards future prospect, awarded to the claimant/injured. He further submits that the Tribunal has further erred in not awarding adequate sum on the head of attendant, conveyance & nutritional diet and therefore, the amount awarded by the Tribunal deserves to be enhanced suitably.

11. Learned counsel for the claimant further submits that till now no amount of compensation is received by the claimant, therefore, he prays for order of pay & recover in this case in the event the Insurance Company is exonerated of its liability. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of **Manuara Khatun and Others Vs. Rajesh Kumar Singh and Others, (2017) 4 SCC 796.**

12. On the other hand, learned counsel for the respondent No.2 /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.

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

14. Considering the nature and extent of injuries suffered by the claimant, the statement of Dr. Lakhan Thakur (AW No. 3), who issued disability certificate (Ex.P/17) and other medical documents, it is noticed that the claimant suffered permanent disability to the extent of 50% and

long time treatment would be required for the claimant. It is not disputed in this case that injured/claimant- Phoolmati is unable to sit folded legs and his right leg got short, therefore, in these circumstances 20% functional disability can safely be considered as per his working capacity. However, the claimant is also entitled for 25% addition to the annual income towards loss of future prospects. So far as the age of the claimant is concerned, the Tribunal has rightly held her 50 years of age. Considering the fact that the accident occurred on 14.12.2010 and the injured/claimant was working as labour (agriculture worker), therefore, the income of the claimant/injured can safely be considered as Rs. 4,000/-pm as per the minimum wages at the relevant time. Further considering the medical bills of Rs. 1178/- (Ex. A/12 to A/16) considered by the Tribunal is just & proper. The claimant is also entitled for Rs. 10,000/- towards special diet and towards attendant Rs. 10,000/- and keeping in view the Apex Court Judgment in the matters of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the claimant is held entitled for the compensation in following manner:-

Sl. No.	Heads	Awarded by the Tribunal	Calculation (in rupees)
01.	Income of the claimant		Rs. 4,000 x12 = Rs. 48,000/- per annum
02.	25% to be added towards future prospect		Rs. 48,000 +12,000 = Rs. 60,000/-
03.	Loss of earning @ 20% per annum		Rs. 12,000/-
04.	Multiplier of 13 to be applied		Rs. 1,56,000/-
05.	Towards expenses on Medicine	Rs. 1178/-	Rs. 1178/- as awarded by

			the Tribunal
06.	Toward conveyance & attendant		Rs. 10,000/-
07.	Towards special diet		Rs. 10,000/-
08.	Total compensation		Rs. 1,77,178/-

15. Since the Tribunal has already awarded Rs.22,428/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,54,750/- with interest @ 8% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

16. However, considering the facts & circumstances of the case, the fact that on the date of accident, the vehicle in question was duly insured with Non-applicant No. 2, keeping in view of the Hon'ble Court decision in the matter of Manuara Khatun (Supra) Insurance Company is directed to first pay the entire amount of compensation to the claimants and then recover the same from Non-applicant No. 1/owner of the offending vehicle in accordance with law.

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

Sd/-

(Gautam Chourdiya)
Judge