

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 549 of 2014

- Ku. Jyoti Yadav, D/o Shri Laxmi Prasad Yadav, Aged About 8 Years, Minor, Through- natural guardian father Laxmiprasad Yadav, S/o Shri Chhatar Ram Yadav, R/o village Kohadiya Charpara, Korba, Police Chowki C.S.E.B. Korba, East, Tah. Civil And Revenue Distt. Korba, Chhattisgarh
----- **Appellant/Claimant**

Versus

1. Kunjram Kashyap, S/o Shri Lakharam, Aged About 32 Years, R/o village Rajakamma, Tah. And P.S. Katghora, Civil and Revenue Distt. Korba, Chhattisgarh (Driver and owner of Car)
2. Manager For I.C.I.C.I. Lombard Motor Insurance, Address- Lalganga Shopping Mall, 3rd Floor, G.E. Road, Raipur, P.S. Goal Bazar, Civil and Revenue District : Raipur, Chhattisgarh (Insurer of Car)
3. Harishankar Vishwakarma, S/o Santram Vishwakarma, Aged About 20 Years Address- Rungadha, P.S. Balko, Tah., Civil and Revenue District : Korba, Chhattisgarh (Driver of Maruti Van)
4. Santosh Kumar Shriwas S/o Shri Sitaram Shriwas, Aged About 34 Years Address- Near Sanskar Bharti Vidyalaya, Rungadha, P.S. Balko, Tah. Civil and Revenue District : Korba, Chhattisgarh (Owner of Maruti Van)

-----Respondents/Non-claimants

For Appellant : Ms Sareena Khan, Advocate
For Respondents-1 to 3 : None appears
For Respondent-4 : Shri Sanjay Patel, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
21.09.2020

1. This is claimant's appeal under section 173 of the MVA, 1988 seeking enhancement of compensation and challenging the impugned award dated 13.11.2013 passed by Motor Accidents Claims Tribunal, Korba (for short, 'Claims Tribunal') in claim case No.118 of 2009 wherein learned Claims Tribunal awarded total sum of Rs.1,69,500/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 21.8.2009 the appellant/claimant was returning from her school to her house at Kohadiya Charpara on a Maruti Van bearing No.CG12-7946 along with other children / students. At Kohadiya Chowk, Main Road, Korba, Darri near Belgari Nala Bridge, one Tata Indica Car bearing No.CG12-D3619 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed the Marshal Van.

3. In the aforementioned accident, appellant suffered grievous injuries over her person including both legs, hands and other parts of the body. Claimant was initially taken to the District Hospital, Korba, from where she was shifted to the Hospital of Dr.Surjit Singh, Orthopaedic Specialist. Claimant thereafter filed an application under Section 166 of MVA seeking compensation of Rs.24,41,600/- pleading therein that the claimant suffered fracture injuries over her both legs, became permanently disabled, her hands and legs are not in a condition in which they were, prior to the date of accident. The claimant was helping in work of tailoring and also helping her mother in household work.

4. NA-1 owner and driver of the offending vehicle submitted reply denying the fact of claim application and further pleaded that no accident has taken place from the offending vehicle, he was possessed with a valid and effective driving license on the date of accident and the offending vehicle was insured with NA-2, Insurance Company.

5. NA-2 Insurance Company of the offending vehicle submitted reply to the claim application and denied the entire pleadings made therein. It was

further pleaded that the accident took place on account of rash and negligent driving of Maruti Van by NA-3. NA-4 was running private vehicle for carrying the school going children. The Maruti Van was overloaded carrying more children, than the sitting capacity.

6. NA 3 and 4, driver and owner of Maruti Van also filed their reply denying all the pleadings made in the claim application, except the admitted facts. It was also pleaded that accident was the result of rash and negligent driving of offending vehicle by its driver. The offence against NA1, driver of offending vehicle has been registered in Police Station, CSEB Korba.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the accident was the outcome of rash and negligent driving of offending vehicle by its driver, NA-1, who dashed the Maruti Van. In the said accident, appellant suffered grievous injuries and permanent disability, which was proved. Negligence on the part of driver of Maruti Van has not been found to be proved. There was no breach of conditions of Insurance Policy and awarded Rs.1,69,500/- as total compensation.

8. Ms.Sareena Khan, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in awarding meagre amount of compensation in the facts and circumstances of the case, where the appellant suffered fracture injury on both of her legs. She further submits that the appellant suffered fracture of femur bone on his left leg and fracture injury on his right leg also, fracture injury over her right tibia.

Learned Claims Tribunal has not considered the evidence of treating doctor wherein it is stated that the injury over the femur bone has discovered Necrosis and her leg was shortened. Considering the aforementioned injuries suffered by the claimant, Medical Board has declared 45% of permanent disability which was accepted by the learned Claims Tribunal, but erred in assessing income of the appellant as Rs.15,000/- per annum and has calculated the amount of compensation on the head of permanent disability to the tune of Rs.1,21,500/- which in the facts and circumstance of the case, is on lower side. She further argued that the learned Claims Tribunal erred in awarding meagre amount on other heads also like pain and suffering, medical expenditure, attendant and not awarding proper amount towards loss of amenities and joy in life and loss of marriage prospects and transportation. She submits that looking to the nature of injuries, the amount of compensation to be enhanced suitably.

9. Shri Sanjay Patel, learned counsel for respondent-4 / owner of Maruti Van supports the award passed by the learned Claims Tribunal.

10. We have heard learned counsel for the respective parties and perused the record of claim case.

11. To appreciate the submissions made by the learned counsel for the appellant / claimant, we have perused the record of claim case. Along with her claim application, she filed the documents of the criminal case including the MLC report dated 21.08.1994 as Ex.P4 wherein it is mentioned that fracture of right leg lower part, fracture left femur, injuries 1

and 2 are grievous in nature and are caused by hard and blunt object. The injuries are of six hours prior to the examination. Claimant has filed Discharge Ticket of Indira Gandhi District Hospital, Korba as Ex.P7 in which date of admission has been shown as 21.08.2009 and date of discharge on 22.08.2009. Looking to the nature of injuries the doctors of District Hospital, Korba referred the appellant to CIMS Medical College, Bilaspur. The appellant, thereafter, was admitted on 22.08.2009 up to 29.08.2009, the Discharge Ticket of which is filed as Ex.P8. In the above document Ex.P8, Diagnosis has been mentioned as fracture SOF left, fracture of BB right leg middle 3rd. Ex.P9 was filed by the appellant, which is Discharge Ticket of Korba Hospital & Stone Clinic in which date of admission has been shown as 05.09.2009 and date of discharge on 11.09.2009. Claimant has submitted her Disability Certificate as Ex.P14 in which permanent disability has been mentioned as 45%. Claimant has examined her father Laxmiprasad, as witness AW1, Dr.Rudrapal Singh Kanwar as AW2 and Dr.R.K.Divya as AW3, in support of her claim.

12. AW1 in his evidence has stated that his daughter has suffered 45% permanent disability, and she is not able to walk with same comfort as before. AW2 in his evidence stated that upon examination of injured claimant, he found Necrosis on femur bone and her leg was shortened. He also clarified that by increase of age of injured, there are chances of increase of permanent disability and there is no possibility of cure of the injury suffered and the disability is of permanent in nature. Dr.RK Divy was examined as AW3 who proved Ex.P4 MLC report dated 21.08.2009.

13. On going through the aforementioned documentary evidences available on record and also upon considering the oral evidence of witnesses, the fracture injuries suffered by the appellant / claimant on both her legs are proved. Doctor very specifically stated that due to Necrosis of femur bone, appellant suffered permanent disability, he also clarified that by increase of age disability may also increase, there is no possibility of curing and coming down of permanent disability suffered by the claimant.

14. Though it is tick marked on word 'progressive' on the Disability Certificate Ex.P14, but upon considering the evidence of doctors (AW2 and AW3), there is no possibility of fully curing of injury and further due to Necrosis, the disability may increase with the age of the appellant, we find that the Tribunal assessed the permanent disability for the whole body as 45%. Learned Claims Tribunal has awarded only Rs.1,21,500/- as compensation under the head of permanent disability. Hon'ble Supreme Court in the case of **Mallikarjun Vs National Insurance Company and others** reported in (2014) (14) SCC 396 has considered the disability suffered by the child on his leg. The Hon'ble Supreme Court in another case **Michael Vs. Regional Manager, Oriental Insurance Company Limited and another** (2013) 14 SCC 774, wherein eight years old child suffered fracture on both her legs with total disability to the tune of 60% awarded Rs.3,80,000/- and held thus:

“12. In this context the reliance placed upon by the Tribunal on the decision in R.D Hattangadi v. Pest Control (India) (P) Ltd. was apposite. That was a case where an advocate of 52 years met with an accident who suffered serious injuries resulting in 100% disability and paraplegia below the waist. The said claimant apart from claiming compensation on other heads made a claim for pain and suffering and loss of amenities of life in a sum of Rs 3 lakh each. As against the claim of Rs 6 lakhs, the High Court granted a sum of Rs 1 lakh. This Court considering the claim for non-pecuniary loss stated as under in paras 9 and 17: (**SCC pp. 556 & 559**)

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life i.e on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

17. The claim under Sl. No. 16 for pain and suffering and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs 3,00,000 each under the two heads. The High Court has allowed Rs 1,00,000 against the claims of Rs 6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation

for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs 1,50,000 in respect of claim for pain and suffering and Rs 1,50,000 in respect of loss of amenities of life. We direct payment of Rs 3,00,000 (Rupees three lakhs only) against the claim of Rs 6,00,000 under the heads 'Pain and Suffering' and 'Loss of amenities of life'."

The above said ratio was subsequently followed in the decision in *Ashwani Kumar Mishra v. P. Muniam Babu* (1999) 4 SCC 22 for enhancing the compensation on account of loss of expectation to life besides disappointment, frustration and mental stress suffered by the claimant therein. The said decision was also followed in *Karnataka SRTC v. Mahadeva Shetty* (2003) 7 SCC 197"

15. In case of **Mallikarjun** (supra), Apex Court has held thus :

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 Lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick."

16. If the facts of present case are considered in light of aforementioned rulings of Hon'ble Supreme Court, it is apparent that learned Claims Tribunal has awarded very meagre amount of compensation on the head of permanent disability. Though the permanent disability mentions the disability for the whole body, but even if taking into account the disability on

the left femur head on account of necrosis, it cannot be said to be less than 25% and as there is shortening of the leg, she will definitely suffer loss towards her marriage prospects. Learned Claims Tribunal apart from the amount assessed towards permanent disability of Rs.1,21,500/-, awarded Rs.5,000/- towards pains and suffering, Rs.5,000/- towards special diet, Rs.5,000/- towards attendant, Rs.10,000/- towards medical expenses, Rs.20,000/- towards loss of marriage prospects, and Rs.3,000/- towards conveyance expenses. Learned Claims Tribunal has awarded amount of compensation on the heads of pecuniary and non-pecuniary which are on lower side and not awarded any amount towards loss of amenities and joy in life.

17. For the aforementioned reasons, the impugned award requires re-computation which is as under.

18. Taking support of judgment of Hon'ble Supreme Court in case of **Mallikarjun** (supra), we are of the view that claimant/appellant is entitled for Rs.3,00,000/- towards permanent disability suffered by her. We find it appropriate to award Rs.20,000/- on the head Discomfort, inconvenience and loss of income to parents.

19. Claimant / appellant will be entitled for Rs.10,000/- as awarded by learned claims tribunal towards medical expenditure, Rs.20,000/- towards loss of marriage prospects because the claimant on the date of accident was only 8 years of age and she has to live her whole life with the disability and considering medical evidence of the doctors (AW2 and AW3), the

disability may increase in future. Now the appellant / claimant will be entitled for a total sum of Rs.3,50,000/- instead of Rs.1,69,500/-.

20. The aforementioned amount of compensation will carry interest @ 6% from the date of claim application till its realization.

21. Other conditions imposed by learned Claims Tribunal will remain intact.

22. The appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge