

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 49 of 2014

- Minor Ku.Simran Sahu, d/o Shri Johan Sahu, Aged About 4 Years Minor, Through- Legal Representative Johan Sahu, Age- 45 Yrs, R/o Damaru, P.S. Baloda Bazar, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G., Chhattisgarh

---- Appellant/Claimant

Versus

1. Anilkumar Manhare, S/o Bhupendra Kumar Manhare, Aged About 19 Years R/o village Boirdih, P.S. Baloda Bazar, Distt. Raipur C.G., Now Distt. Baloda Bazar-Bhatapara Civil and Revenue District Baloda Bazar-Bhathapara, Chhattisgarh (Driver of alleged vehicle Mahindra bearing registration No.CG 04 DM/8305 and Trolley No.CG 04 DM/8306)
2. Bhupendra Kumar Manhare, S/o Dayaram Manhare, R/o village Boirdih, P.S. Baloda Bazar, Distt. Raipur CG, Now Distt. Baloda Bazar-Bhatapara Civil and Revenue District Baloda Bazar-Bhatapara, Chhattisgarh (Owner of alleged vehicle Mahindra bearing registration No.CG 04 DM/8305 and Trolley No.CG 04 DM/8306)
3. Ifco Tokiyo General Insu.Co.Ltd. Branch Office Lal Ganga Shopping G.E. Road, District : Raipur, Chhattisgarh (Insurer of alleged vehicle Mahindra bearing registration No.CG 04 DM/8305 and Trolley No.CG 04 DM/8306)

----Respondents

For Appellant	: Shri AD Kuldeep, Advocate
For Respondents-1 and 2	: None appears
For Respondent- 3/Insurance Company	: Shri P Acharya, Advocate on behalf of Shri Amrito Das, Advocate

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

Per Parth Prateem Sahu, J.
20.08.2020

1. This is claimant's appeal filed under Section 173 Motor Vehicle Act, 1988 challenging the impugned award dated 28.09.2013 passed in Claim case No. 97 of 2011 by the 2nd Additional Motor Accident Claim Tribunal, Baloda Bazar (for short, 'Claims Tribunal') whereby learned Claims

Tribunal allowed the application in part and awarded Rs.1,62,199/- as compensation in a permanent disability case.

2. Facts relevant for disposal of this appeal are that on 08.03.2011 at about 6.15 pm appellant Ku.Simran, aged about 4 years was playing in front of her house. At that relevant time, NA-1 Anil Kumar Manhare, while driving Tractor bearing No.CG04DH8305 and Trolley bearing No.8306 rashly and negligently, knocked down the appellant. In the said accident she suffered grievous injuries over her left side of the face and on her legs. She was initially taken to Community Health Centre, Palari for treatment and thereafter to Urmila Multi-Speciality Hospital, Raipur. After the treatment, appellant filed claim application under Section 166 and 140 of the Motor Vehicle Act, 1988 seeking compensation of Rs.8,80,000/- pleading therein that due to accidental injuries suffered by her, her face is disfigured and further suffered grievous injuries over her left eye, due to which she will face difficulty for her marriage.

3. NA-1 & 2/ driver and owner of the offending vehicle submitted reply to claim application and denied adverse pleadings made therein and pleaded that accident took place on account of negligence on the part of appellant herself and the appellant has been kept in the private hospital only for the purpose of seeking higher compensation. The medical documents placed on record are fabricated, NA-1 was possessing valid and effective driving license on the date of accident. The liability, if any, would be upon the Insurance Company/ NA-3.

4. NA-3/ Insurance company submitted reply and denied all the adverse pleadings and pleaded that there was breach of conditions of Insurance Policy. The injured claimant herself was responsible for the accident and the amount of compensation is highly exaggerated.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record held that the appellant suffered injuries on account of rash and negligent driving of the offending vehicle by NA-1. Breach of conditions of the Insurance Policy is not proved and awarded Rs.1,62,199/- as compensation.

6. Shri AD Kuldeep, learned counsel for the appellant submits that learned Claims Tribunal has awarded only medical expenditure of Rs.1,55,199/- and not awarded any amount towards permanent disability suffered by the appellant which was also proved by placing Disability Certificate issued by the District Medical Board, District Balodabazar-Bhatapara as Ex.A56, which was proved by AW3 Dr Pramod Tiwari. The appellant lost her one eye in the accident. Learned counsel also submits that learned Claims Tribunal erred in awarding only Rs.5,000/- towards pain and suffering and 2,000/- towards special diet. He further submits that percentage of permanent disability suffered by the appellant is less than 40% in which the Medical Board has taken into note of blindness of one eye and dis-figuration of face was not taken into consideration by the Medical Board, which is apparent from the photograph affixed on the disability certificate of the appellant. Adding to it, learned counsel also referred to the Discharge Ticket Ex.A11, MLC report Ex.A4, information sent by Urmila Hospital i.e. treating Hospital to the Police Station,

Balodabazar, Raipur regarding the injuries suffered by the appellant. He submits that though the Disability Certificate was issued mentioning the disability to be less than 40% but upon analysing overall injuries suffered by her on left side of the face along with blindness of one eye, it is apparent that her permanent disability will be more than 40%. Particularly, looking to the fact that the appellant is a girl child, there will be difficulty in getting her married in future. Learned counsel further submits that disability suffered by her and the period of treatment taken in the hospital, appropriate amount of compensation to be awarded.

7. Per contra, Shri P Acharya, learned counsel appearing for the Insurance Company submits that learned Claims Tribunal taking into account overall facts and circumstances of the case, and looking to the age of appellant at the time of accident, has awarded amount of compensation including entire medical bills to which guardian of the appellant has incurred expenditure. He supports the award passed by learned Claims Tribunal.

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

9. Occurrence of accident and Insurance Policy are not in dispute. Only point which is to be considered in this appeal is, whether quantum of the compensation awarded by learned Claims Tribunal in the facts and circumstances of the case and looking to the nature of injuries suffered by the appellant, is just and proper or not?

10. Perusal of Ex.A4 MLC report placed on record would show that appellant suffered avulsion injury over left forehead and face, size shown is 10 x 10cm 1 cm deep irregular margin and shown to be grievous injury. Injury to left eye with injury to left lid, which is also shown to be grievous in nature. Ex.A5 which is Injury report given to the Police Station of Balodabazar also mentions the avulsion injury on head and face and injury to left eye and both the injuries to be grievous in nature. Document A-56 permanent Disability Certificate issued by the District Medical Board, Balodabazar shows blindness of one eye and percentage of permanent disability as less than 40%. To prove the Disability Certificate, claimant has examined AW3, Dr. Pramod Tiwari, CMO, Baldoda Bajar / Bhatapara. In his evidence this witness stated that after examining the appellant, permanent Disability Certificate was issued. He further stated that upon examination of the appellant, he found her left eye fully damaged and she will not be able to see from that eye.

11. Looking to the aforementioned documentary and oral evidence available on record with regard to injuries and permanent disability suffered by the appellant, we are of the view that learned Claims Tribunal erred in not awarding any amount towards permanent disability though recorded a finding in paragraph-11 of the impugned award that the appellant suffered permanent disability by accepting the evidence of Dr Pramod Tiwari, AW3 and Ex.A4 MLC report. The learned Claims Tribunal has not assigned any reason for not awarding any amount towards permanent disability suffered by the appellant.

12. Even if taking into consideration age of the appellant on the date of accident to be four years, then also lump-sum amount on the head of permanent disability is required to be awarded. The award of amount of compensation in cases of permanent disability suffered by a minor child has been considered by Hon'ble Supreme Court in case of **Mallikarjun Vs Divisional Manager, National Insurance Company Limited and another** reported in 2014 (14) SCC 396 and 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.”

13. If, in light of aforementioned law laid down by Hon'ble Supreme Court, facts of the present case are considered, where appellant / injured is a girl child aged about 04 years, suffered dis-figuration on her left side of the face, also lost her left eye and both these injuries are of permanent nature, and will be there with her for her whole life, compensation to be awarded requires re-consideration. She may not get an appropriate match in future looking to the nature of disability suffered by her on her face and left eye.

14. Apart from loss of one eye, the appellant has also suffered disfiguration of her face on account of avulsion injury on her fore-head on account of motor accidental injuries.

15. Taking into consideration the overall aspect of the case, we are of the view that the total disability suffered by the appellant would be above 30% and therefore, we find it appropriate to award a lump sum amount of compensation of Rs,4,00,000/- as considered by Hon'ble Supreme Court in **Mallikarjun** case (supra).

16. Apart from the above, claimant will also be entitled for an amount of Rs.1,55,199/- towards medical expenses incurred on her treatment.

17. Now the appellant claimant will be entitled for **Rs.5,55,199/-** as compensation (400000 + 155199) instead of Rs.1,62,199/- as awarded by learned Claims Tribunal.

18. Aforementioned compensation will carry interest @ 6% p.a from the date of filing of this petition till its realisation. 50% of the above amount of compensation to be kept in fixed deposit till appellant attains the age of majority in any Nationalised Bank. Other conditions imposed if any by learned Claims Tribunal shall remain intact.

19. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge