

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1183 of 2015

Ku. Kajal Sahu D/o Late Mahendra Sahu, Aged About 6 Years Minor Through Represented By Her Mother Smt. Sandhya Sahu Wd/o Late Mahendra Sahu, R/o: village - Dargahan, Tahsil Kurud, District :Dhamtari, (CG).

---- Appellant

Versus

1. Tikaram Ogre S/o Chhannu Ogre, Aged About 42 Years, R/o: village- Mayakbandha, Police Station -Abhanpur, District Raipur, (CG). (Driver).
2. Jagat Ram S/o Bhakadu Dhritlahre, Aged About 48 Years, R/o: village -Gotiyardi, Police Station -Abhanpur, District :Raipur, (CG). (Owner).
3. Insurance Company, Bhartiya Exa General Insurance Company Limited, 1st Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Raipur, District- Raipur, Chhattisgarh.

--- Respondents

For Appellant	: Mr. Anil Gulati, Advocate.
For Respondent No.1 & 2	: None.
For Respondent No.3	: Mr. Nilesh Thakur, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

05/11/2020

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned Chief Motor Accident Claims Tribunal, Dhamtari, (CG) (for short, 'the Tribunal) vide award dated 01.07.2015 passed in Claim Case No.112/2014, whereby the Tribunal partly allowed the application for grant of compensation and awarded Rs.1,52,870/- as compensation in injury case including Rs.1,49,870/- as medical expenses.
2. Facts relevant for disposal of this appeal are that on 21.04.2014 Kumari Kajal (injured), aged about 6 years was going to Sejbahar on a motorcycle along with his father and mother. On the way near Semra Turn at Bhakhara Main road, one Magic vehicle bearing registration No.CG-04/TA/2669 (for short offending vehicle), driven rashly and

negligently by Non-applicant no.1, came towards wrong side, dashed the motorcycle and caused accident. In the aforesaid accident, Kumari Kajal and his father -Mahendra Sahu suffered grievous injuries, Mahendra Sahu died on spot and Kumari Kajal suffered injuries on her head, face and right leg. She was taken to Christian Hospital, Dhamtari where she remained admitted for about 12 days and thereafter shifted to Narayna Hospital, Raipur where she took treatment for about 1 month. Accident was reported to Police Station -Bhakhara based upon which crime was registered against non-applicant No.1.

3. Kumari Kajal filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.6,45,000/- pleadings therein that on account of motor-accidental injuries, she became permanently disabled.
4. Non-applicant Nos.1 & 2 -driver and owner of offending vehicle, submitted reply to application and denied the pleadings made therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effect driving license, offending vehicle was insured with non-applicant No.3-Insurance Company, hence, liability to satisfy any compensation is upon Insurance Company.
5. Non-applicant No.3-Insurance company submitted reply to application, while denying the pleadings made therein pleaded that correct fact was not pleaded by claimant in application. Accident was result of negligence on the part of father of claimant who was driving motorcycle. Information of accident was not given to Insurance Company under Section 158 and 134 of the Act of 1988. On the date of accident, non-applicant No.1 was not having valid and effective driving licence. As there was breach of

policy condition, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that claimant suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy condition was not found to be proved. Tribunal allowed application in part, awarded a sum of Rs.1,52,870/- as compensation along with interest @ 6% p.a, fastened liability upon Non-applicants to pay the amount of compensation, jointly and severally.
7. Learned counsel for the appellant/claimant submits that out of total amount of compensation ie Rs.1,52,870/-, the Tribunal has awarded Rs.1,49,870/- towards medical expenses. Apart from medical expenses, Tribunal awarded only Rs.3,000/- towards mental pain and agony. He further submits that claimant was under treatment continuously for more than 3 months. She suffered multiple fracture injuries over her person ie on right femur, jaw and chin. Her face was disfigured due to dislocation of teeth but the Tribunal has not awarded any amount towards permanent disability, attendant, transportation, special diet. Claimant is the resident of village -Dargahan, Tahsil Kurud, Distt. Dhamtari and after accident she was taken to Christian Hospital, Dhamtari and thereafter shifted to Narayana Hospital, Raipur. After discharge from the hospital, she was again admitted at Narayana Hospital but even then Tribunal has not awarded appropriate amount of compensation on pecuniary and non-pecuniary damages.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that Tribunal has recorded a finding that claimant failed to prove that she suffered any permanent disability. Claimant neither examined any doctor nor placed on record any disability certificate of any nature. In absence of any documentary evidence to prove permanent disability, Tribunal is justified in not awarding any amount towards permanent disability. He further submits that the Tribunal has awarded Rs.1,49,870/- towards medical expenses on the basis of medical bills placed on record and proved by claimant. The Tribunal has awarded just amount of compensation, which does not call for any interference.
9. I have heard learned counsel for the parties and perused the record of claim case.
10. Apart from pleadings with regard to nature of injuries and part of body where claimant suffered fracture injuries, she has placed on record In-Patient Admission Form of Shree Narayana Hospital, Raipur as Ex.P-6 in which it is mentioned that claimant suffered 'head injury with fracture shaft right upper /3rd'. Further placed on record X-ray as Ex.P-8 of Narayana Hospital mentioning therein that 'Fracture of mandible extending to alveolus; Post operative and Metallic implant seen'. Ex.P-7 shows that claimant underwent operation and 'ender's nailing' was done. Ex.P-19 & 20 shows that his 'mandible (जबड़ा)' was also operated and it was fixed by screw and plate. As per Ex.P-24 discharge bill of Shree Narayana Hospital, claimant took treatment from 21.04.2014 to 30.08.2014. OPD Receipts of Shree Narayana Hospital placed on record as Ex.P-74 & 75 would show that claimant took treatment as "OPD -patient" on 12th July,

2014 and thereafter, as 'in-patient' from 26.08.14 to 28.08.14 as per Ex.P-76 discharge bill.

11. In view of aforementioned documents, claimant has proved nature of injuries suffered by her, which were grievous in nature. Age of claimant has been stated to be 6 - 7 years at the time of accident. The Tribunal after taking into consideration documents placed on record with regard to treatment has assessed medical expenditure of Rs.1,49,870/-. The expenditure incurred by claimant in her treatment itself shows that how serious and grievous injuries she suffered, but the Tribunal has not considered and not awarded any amount towards injuries suffered by claimant if failed to prove permanent disability. Awarded meager amount of compensation towards pains and suffering, not awarded any amount towards attendant, loss of amenities and joy in life, transportation, special diet etc for which claimant is entitled for.

12. In the case of **R.D. Hattangi vs. Pest Control (India) Pvt. Ltd. & ors** reported in **(1995) 1 SCC 551**, Hon'ble Supreme Court has considered the heads under which amount of compensation to be awarded to the claimant held as under :-

“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.”

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the 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 or personal deprivations. Money cannot renew a broken and shattered physical frame.

12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

13. In case of **Rajkumar vs. Ajay Kumar & another** reported in (2011) 1 **SCC 343**, the Hon'ble Supreme Court has again considered the issue and held that in personal injury cases, appropriate and just amount of compensation to be awarded under the heads of pecuniary damages and non-pecuniary damages.

“6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii) (a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability- Item (ii) (a). We are concerned with that assessment in this case

14. Upon considering all the facts and circumstances, documentary and oral evidence placed on record, in the considered opinion of this Court the Tribunal has not awarded just amount of compensation to claimant.

15. So far as submission with regard to permanent disability is concerned, upon going through the record, I do not find that claimant has placed on record any material or document to prove that she suffered permanent disability. Claimant neither placed on record disability certificate nor doctor was examined before the Tribunal. In view of above facts of the case at hand, I do not find any error in not awarding any amount of compensation towards permanent disability.

16. So far as the award of compensation towards medical expenses is concerned, learned counsel for the claimant could not able to point out as to which of the bills submitted before the Tribunal has not been considered. The Tribunal has awarded Rs.1,49,870/- towards medical expenses. In absence of any specific proof that any of the bill has been left of consideration by the Tribunal, I do not find any error in the award of Rs.1,49,870/ towards medical expenses.
17. The Tribunal has awarded Rs.3,000/- towards pains and suffering which is on lower side. Claimant at the age of 6-7 years has suffered fracture injuries over his right femur, fracture of lower jaw, dislocation of teeth, underwent operation. Taking into consideration nature of injuries and treatment taken by her, I find it appropriate to award Rs.25,000/- towards pains and suffering instead of Rs.3,000/- as awarded by the Tribunal.
18. The Tribunal has not awarded any amount towards injuries suffered by claimant ie fracture injuries which were affixed with the help of plate and screws. Hence, I find it appropriate to award Rs.25,000/- towards injuries.
19. After the accident, claimant was taken to Christian Hospital, Dhamtari from where she was referred to Shree Narayana Hospital, Raipur from where she was discharge 30th April 2014. She again went for follow up treatment in the month of July and thereafter took treatment as in-patient from 26.08.2014 to 28.08.2014, as per Ex.P-76 discharge bill and also underwent surgery during that period. Taking into consideration the period of treatment and number of time claimant travelled to Hospital at Raipur from her resident, I find it appropriate to award Rs.10,000/- towards transportation.

20. Claimant suffered jaw and teeth injuries, fracture of jaw was operated and it was fixed by screw and wire and during that period claimant may not be able to take her normal and regular diet. Hence, I find it appropriate to award Rs.7,000/- towards special diet.

21. Claimant at the age of 6-7 years was admitted in hospital twice and underwent surgery of mouth and right femur. Looking to the nature of injuries and treatment, she might have required some person to attend her during that period, at least for a period of four months. I find it appropriate to award Rs.16,000/- towards attendant, Rs.20,000/- towards loss of amenities and joy in life looking to her age.

22. Now claimant will be entitled for a total sum of **Rs.2,52,870/-** (Rs.1,49,870/- + Rs.25,000/- + Rs.25,000/- + Rs.10,000/- + Rs.7,000/- + Rs.16,000/- + Rs.20,000/-) instead of **Rs.1,52,870/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

23. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-