

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 66 of 2015

Smt. Shakuntala Singh W/o T. P. Singh, Aged About 54 Years, R/o: H.No. A-15, Sec.-2, Ekta Nagar, Gudhiyari, Raipur, Tah & Distt - Raipur C.G.

---- Appellant/Claimant

Versus

1. Devendra Tiwari S/o A. K. Tiwari, R/o -Annapurna Para, Near Krishi Upaj Mandi, Kanker, P. S. & Distt - Kanker, C.G. **(Driver)**.
2. Nand Kishor Jain S/o Sampat Lal Jain, R/o- Vikas Nagar, Kondagaon, P.S. Kondagaon, Distt. Kanker C.G. **(Owner)**.
3. Choramandalam M.S. General Insu. Co. Ltd, Hinduja Complex, Paras Nagar Chowk, Near Railway Line, Devendra Nagar, Raipur, Tah & Distt- Raipur C.G. **--- Non-applicant Nos.1 to 3/Respondents**

For Appellant	: Mr. Amiyakant Tiwari, Advocate.
For Respondent No.1 & 2	: None.
For Respondent No.3	: Mr. B. L. Dewangan, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J

22/01/2021

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned 5th Additional Motor Accident Claims Tribunal, Raipur, (for short, 'the Tribunal) vide award dated 14.10.2014 passed in Claim Case No.78/12, whereby Tribunal allowed application in part and awarded total compensation of Rs.5,95,536/- in an injury case.
2. Facts relevant for disposal of this appeal are that on 29.05.2011, appellant/claimant was travelling on bus bearing registration No.CG18-F-0340, (for short, 'offending bus'). When offending bus reached near National Highway No.-43, Main road at village -Bahingaon at about 03:00 a.m., driver of offending

bus drove it rashly and negligently and dashed with Truck bearing registration No.CG04-J-9831 from back side and caused accident. In the said accident, along-with other passengers of bus claimant also suffered grievous injuries over her person. She suffered fracture injuries over her back bone, ribs, clavicle bone and on both legs. After accident, she was taken to Primary Health Centre, Keshkal from where she was brought to Ramkrishna Care Hospital, Raipur for her treatment.

3. Appellant/claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.14,30,000/- pleading therein that on the date of accident, she was 54 years of age, doing work of 'tailoring' and earning Rs.5,000/- per month, on account of motor-accidental injuries, she suffered permanent disability and is unable to do her work which she was doing prior to the date of accident.

4., Non-applicant Nos.1 & 2, driver & owner of offending bus, submitted reply to application, while denying all the adverse pleadings made therein pleaded that accident was a result of rash and negligent driving of truck. There was no negligence on the part of non-applicant No.1-driver of offending bus. On the date of accident, non-applicant No.1 was possessed with valid and effective driving license, offending bus was insured with non-applicant No.3-Insurance Company. No document has been filed by claimant with regard to the accidental injuries, medical treatment and permanent disability.

5. Non-applicant no.3/Insurance Company submitted its reply to claim application, while denying the entire pleadings made therein pleaded that non-applicant No.3-Insurance Company is the insurer of offending bus. Claimant has not suffered permanent disability. It was further pleaded that accident was a result of rash and negligent act of driver of truck and not on account of negligent driving of non-applicant No.1- driver of offending bus. Offending bus

was not involved in any manner in accident. It was plied in breach of policy condition as on the date of accident, non-applicant No.1/driver was not possessed with valid and effective driving license. There was no valid permit and fitness certificate with offending bus.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that accident was due to rash and negligent driving of offending bus by non-applicant No.1, claimant suffered grievous injuries. Permanent disability and breach of policy condition were not found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.5,95,536/- along-with interest @ 6% p.a. and fastened liability upon non-applicants jointly and severally to satisfy the amount of compensation.

7. Learned counsel for appellant/claimant submits that out of total amount of compensation of Rs.5,95,536/-, a sum of Rs.5,78,536/- is awarded towards medical expenses and only Rs.17,000/- has been awarded towards other heads. He further submits that Tribunal overlooking the nature of injuries, period of treatment, has awarded very meager amount of Rs.5,000/- towards grievous injuries, Rs.5,000/- towards nutrition diet & traveling, Rs.2,000/- towards attendant & Rs.5,000/- towards loss of work. No amount has been awarded towards pains & suffering and other non-pecuniary damages. He further submits that claimant placed on record permanent disability certificate as Ex.A-279 showing 35% of permanent disability for the whole body which was also proved by Doctor AW-3, but Tribunal has not considered the disability certificate and arrived at an erroneous finding that claimant failed to prove the fact of permanent disability. He also submits that amount expended for medical treatment itself is sufficient to show the nature of injuries suffered by claimant. Referring to medical documents he submits that claimant suffered 'Para paresis'.

8. Learned counsel for respondent No.3-Insurance Company submits that Ex.A-279 disability certificate is not issued by treating doctor or Medical Board but it was issued by private doctor, hence, Tribunal was justified in not accepting the same and not awarding any compensation towards permanent disability. He further submits that Tribunal after considering the entire facts and circumstances of the case has awarded just amount of compensation, which does not call for any interference.

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

10. Claimant has placed on record discharge ticket of Jevandeep Hospital, Kanker as Ex.A-8 showing her admission on 29.05.2011 and discharged on the same date. In the said document she was referred to higher hospital for better treatment. Further placed on record discharge summary of Ramkrishna Care Hospital, Raipur as Ex.A-9 showing date of admission as 29.05.2011 and discharge as 20.06.2011. Relevant portion of Ex.A-9 is extracted as below;-

“Final Diagnosis.

Head injury with # D5-6 with blunt injury chest with paraparesis with right shoulder dislocation”

Course in Hospital.

“D5-6 mass miami stabilization with decompression by Dr.S.N. Madhariya ALB Dr. Roy Choudary;
Operative Procedure :- Unstable # D5-6”

11. Thereafter, claimant again got admitted for a period from 12.07.2012 to 21.07.2012 in Ramkrishna Hospital as per Ex.A-76, relevant portion of which reads thus:-

“Final Diagnosis.

Flup-OP-C/O-D5-6 Post Traumatic # Collapse with Blunt. Trauma Chest with Paraparesis with Shoulder Dislocation with Serew Migration”

12. Perusal of above documents clearly shows that after the accident, claimant was taking continuous treatment from different doctors and hospitals including Heritage Hospital, Raipur. Ex.A-86 shows that claimant also took treatment from Dr. Mukesh Tripathi (M.S) (Orthopedic Surgeon), New Delhi who after examining her arrived at finding that due to "Dorsal Spine Fracture' she was unable to sleep due to severe pain.

13. In Ex.A/149 ie chart of Department of Physiotherapy and Rehabilitation, Ramkrsishna Hospital has made following observations :-

“Remarks: Power Charting as above – Non-Eq Test – Negative.
Sensary : Paraesthesia – numbness B/L distal L.L. esp.
 So, features of sensory ataxia ?? 'Romberg's -fairly + ve.
 Painful ® Hand moits esp finger flexion and range.
 Weak ® hand grip
 Supported/lyarded walking-slapping gait
Rx : Gait training -Strengthening ens – gripping ens
 Foot Care – Revived S.O.S, - Sensory training as explained”

14. On going through the medical documents, some of which are referred in the preceding paragraphs, it is clear that claimant suffered serious injuries over her person including her shoulder, spine and leg. Even after lapse of more than one year, she could not recover and suffering with problems due to spinal injury. Ex.A-9 discharge ticket of Ramkrishna Care Hospital shows that claimant suffered 'para-paresis'. True it is that disability certificate ought to have been obtained from Medical Board but taking into consideration disability certificate wherein it is mentioned that the doctor AW/3 has examined the claimant on 13.08.2012, 17.08.12, 14.09.12 & 17.09.12 and only thereafter issued the disability certificate, it cannot be ignored upon reading it with the injuries, treatment and condition of patient shown in discharge ticket and other medical documents.

15. Taking into consideration over all facts and circumstances of the case, nature of injuries, medical documents available on record and also considering

the age of claimant on the date of accident i.e. more than 50 years of age, in the considered opinion of this Court, Tribunal erred in rejecting claim of appellant of permanent disability.

16. For the foregoing reason, we hold that claimant suffered 25% of permanent disability affecting her capacity to work, leading to financial loss. Claimant has pleaded and stated that prior to the date of accident, she was doing work of 'tailoring', which could not be proved. But she being a married lady having her family having duty upon her to work for her family from morning till night; she has to cook food, maintain her house, wash clothes and utensil etc. apart from the other works as she has stated of 'tailoring'. Looking to the date of accident, we find it appropriate to assess income of claimant as Rs.4,000/- per month.

17. In view of ruling of Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**¹, claimant is also entitled for addition of 10% of establish income towards future prospects for assessing total income of claimant for the purpose of calculating the amount of compensation.

18. Tribunal has not awarded amount towards pains and suffering, loss of amenities and joy in life and awarded very meager amount towards Nutritious diet and travelling, attendant, and loss of work.

19. For the foregoing reasons, we propose to re-compute the amount of compensation awarded by the Tribunal.

20. Income of claimant is taken as Rs.4,000/- and accordingly yearly income of claimant comes to Rs.48,000/- (4,000 X 12). By adding 10% towards future prospects as claimant being 54 years of age on the date of accident, which brings total yearly income of claimant to Rs.52,800/- (48,000 + 10% of 48,000). In view of guidelines of Hon'ble Supreme Court in case of **Sarla Verma (Smt.)**

¹ (2017) 16 SCC 680

and others v. Delhi Transport Corporation & Ors², appropriate multiplier would be '11'. By applying multiplier of 11 total yearly income of claimant would come to Rs.5,80,800/- (52,800 X11). As this Court has assessed 25% loss of earning capacity, loss of yearly income of claimant comes to Rs.1,45,200/- (25% of Rs.5,80,800/-)

21. Apart from above, appellant is further entitled for Rs.50,000/- towards pain and sufferings; Rs.50,000/- towards loss of amenities and joy in life; Rs.20,000/- towards special diet and travelling; Rs.20,000/- towards attendant; Rs.24,000/- towards loss of income during the period of treatment for 6 months (4,000 X 6). She is also entitled to Rs.5,78,536/- towards medical expenses as awarded by the Tribunal.

22. Now, appellant/claimant is entitled for a total sum of **Rs.8,87,736/-** (Rs.1,45,200/- + Rs.5,78,536/- + Rs.50,000/- + Rs.50,000/- + Rs.20,000/- + Rs.20,000/- + Rs.24,000/-) instead of **Rs.5,95,536/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-
(P. R. Ramamchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-

² (2009) 6 SCC 121