

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 939 of 2012

Anita Kashyap D/o Shri Dayaram Kashyap, aged about 19 years, R/o village Kaknar, P.S.Parpa, District Bastar (C.G.) (Claimant).

---Appellant

Versus

1. Anil Kashyap S/o Tulsiram Kashyap, aged about 23 years (Driver).
2. Vijay Pandey S/o Kaliprasad Pandey, aged about 27 years (Owner).
Both are R/o Metguda para, Jawahar Nagar, Jagdalpur, District Bastar (C.G.).
3. The Branch Manager, Royal Sunderam alliances Insurance Co.Ltd. Millennium City Infoshan Technology park, unit now T-2-21 tower ii plot no. D.N.62 Sector V.Salt, lack Kolkata (West Bengal) (Insurer).

---Respondents

For claimant	:	Shri P.K.Tulsyan, Advocate.
For Insurance Company	:	Shri S.S.Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/02/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 16/03/2012 passed by the learned Motor Accident Claims Tribunal, Bastar, Jagdalpur (C.G.) in Motor Accident Claim Case No. 73/2010.
2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.73,734/- with interest @ 9% per annum from the date of application.
3. The counsel for the appellant/claimant submits that, the compensation awarded by the Tribunal is on the lower side and the same deserves

suitable enhancement. He further submits that, the Tribunal has not properly appreciated the evidence of the nature of injury sustained by the claimant and has only awarded a lump sum compensation of Rs.50,000/-. He further submits that, they had examined doctor V.K.Jha-AW/3 before the Court below who had assessed the disability at 50%, but the Tribunal has not considered this aspect. He further submits that, the Tribunal also has not granted any compensation for the pain and suffering and mental agony which she had undergone and thus prayed for suitable enhancement of the award.

4. A plain reading of the facts as is stipulated in the statement of the doctor as also from the claimant what clearly reflect is that, it is a case where the claimant received injuries on both her hands and that her right hand got fully damaged in as much as the claimant was not able to lift her hand above the shoulders and that she was also facing difficulties to drink water with her right hand.
5. Considering the nature of evidence which has been led by the claimant which stands corroborated from the evidence of doctor, this Court has no hesitation in assessing the overall disability of the claimant at 25% keeping in view the judgment of Honb'le Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr. [2011 1 SCC 343]**.
6. Accepting the notional income of the deceased at Rs.3,000/- per month, the yearly income would become Rs.36,000/-. The claimant would also be entitled for 40% of his income towards future prospects which would

bring the amount to Rs.50,400/-. If we assess 25% as the loss of earning capacity, the amount would come to Rs.12,600/- which if multiplied by applying multiplier of 18, the amount would come to Rs.2,26,800/-. It is ordered accordingly that the claimant shall be entitled for a compensation of Rs.2,26,800/- towards loss of earning capacity. In addition, the claimants would also be entitled for the medical expenses so also the compensation under special diet as has been awarded by the Tribunal i.e. at Rs.5,734/- & Rs.18,000/- respectively. In addition, this Court also quantifies the compensation towards the pain and suffering and mental agony at Rs.25,000/-. Thus the total compensation payable would become Rs.2,75,534/- instead of Rs.73,734/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

7. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit