

IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 92 of 2010

Bina Goswami W/o Sri Rajendra Goswami, resident of Gosala Nala Road,
P.O. & P.S.- Jugsalai, Jamshedpur , Dist- East Singhbhum.

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Appellant

Versus

The Oriental Insurance Co. Ltd., Hindustan Building, Bistupur, P.S.- Bistupur,
Jamshedpur, Dist- East Singhbhum, Jharkhand.

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Respondent

CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mrs. Nivedita Kundu, Advocate
Mr. Saibal Mitra, Advocate
For the Respondent : Mr. Nalini Jha, Advocate

CAV ON 03.02.2022

PRONOUNCED ON 10 .02.2022

1. The claimant has preferred instant appeal for enhancement of the compensation of Rs.46,127 with interest @ of 6% per annum in compensation case no. 19/09 u/s 166 of the Motor Vehicle Act against the owner of the vehicle for the injury sustained by the claimant Bina Goswami in a motor vehicle accident involving truck bearing registration No. JH 01 K 0681.
2. As per the claimant's case she was an employee of the Health department with monthly income of Rs.6000/- She sustained injury while she was on way to Ranchi from Jamshedpur by Indica car bearing registration no. JH-05P-1918 which met with accident involving truck bearing registration no. JH-01K-0681. In this accident her companion Jharna Das died and she sustained injury resulting in permanent disablement.
3. The learned Tribunal held that the claimant was a para medical worker at the relevant time of the accident with a monthly income of Rs 6,000/-. It has been noted on the basis of Ext 6 that she had incurred medical expenditure of Rs.28,172 on her treatment. A further loss of her monthly salary for three

months amounting to Rs.18,000/- during the period of her treatment has been allowed.

4. The appeal has been preferred mainly on the ground that as a result of accident the claimant had suffered a 30% disablement as assessed by the Chief Medical Officer cum Civil Surgeon, Jamshedpur and a certificate has been issued in this regard (Ext 7), but no compensation has been awarded under this head. Appellant has relied on the following authorities:

- I. Jakir Hussein v. Sabir, (2015) 7 SCC 252
- II. Rekha Jain v. National Insurance Co. Ltd., (2013) 12 SCC 202
prospect in a case of permanent disability of a doctor.
- III. Divisional Manager National Insurance Company Ltd. Vs Sanjay Kumar Soni
- IV. Raeesah Ahmad Vs United India Insurance Company Ltd. Appeal (Civil)2869-2870 of 2008.

5. Oriental Insurance Company has preferred Cross objection No.8 of 2010 on the ground that it is a case of contributory negligence as the accident between Indica car and Tata 407 truck in head on collision but the insurer has been only saddled with liability to pay compensation. On the quantum of compensation it submitted that the claimant injured was not on a permanent job and had sustained only superficial injury of swelling and pain. It is argued that the claimant has not suffered any functional disability to entitle her to enhancement of compensation awarded by the Learned Tribunal.

6. On perusal of the disability certificate it is evident that the claimant suffered post accidental swelling and pain in right thigh and right knee resulting in disability of 30% assessed by the Medical Board headed by the civil surgeon. She (C.W.1) has deposed in para 11 of her deposition that she suffered fracture of her knee in the accident. She could not join her duty after two months of the accident. In her cross-examination she has deposed that she is continuing in her nursing profession as earlier and there has not been any reduction in her salary.

7. On the point of accident the eye witnesses are the claimant herself who has been examined as A.W. 1, who has stated that accident took place due to rash and negligent driving of the truck bearing registration No.JH01K0681. No contrary evidence has been led on behalf of the appellant Insurance Company, to rebut the manner of accident as deposed by the claimant. Learned Tribunal in its finding on issue no.2 that the accident took place due

to rash and negligent driving of the truck. I do not find any material to interfere with the finding of the tribunal on this issue.

8. Law is settled that there is difference between medical disability and functional disability and in any case medical disability can not be applied mechanically, but it is to be determined as to what is the percentage of functional disability on account of the injury. Both may coincide but it may drastically vary as well. In **2011 (1) SCC 343 Raj Kumar Vs. Ajay Kumar and another para(8)** it has been held that “where the claimants suffers a permanent disability as a result of injuries, assessment of compensation under head of loss of future earnings would depend upon effect and impact of such permanent disability on his earning capacity. The tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, i.e., percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some tribunals wrongly assumed that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings.”

9. In view of the above ratio the Tribunal was in error of not awarding any compensation under the head of permanent disability of 30% in the accident. No reason has been assigned for not awarding the compensation amount. The claimant is a nurse whose work involves considerable movement while attending to the patients and is not a stationary job. It has come in evidence that she had sustained fracture of knee which resulted in 30% disablement. In the facts and circumstances of the present case the medical disability of 30% can be regarded as the functional disability of the claimant. Simply because

she was on a contractual job will not disentitle her to the claim. To the contrary considering the uncertain nature of a contractual job, disability in her lower limb will certainly adversely affect her earning capacity. Taking monthly income of Rs 6000/ as claimed by the claimant in the claim application age of about 30 years at the time of accident the compensation for suffering permanent disablement of 30% shall be as follows:

10. The final compensation amount shall accordingly work out as per the table given below:

Monthly Income	Rs. 6,000
Loss of annual earning capacity Rs 6000/- x 30% x 12	Rs. 21,600/-
Taking multiplier of 17 considering the age of the deceased to be about 30 years	Rs.21,600 x 17 = Rs.3,67,200
Future Prospect @ 40%	Rs. 1,46,880
Total	Rs.5,60,207/-

The claimant shall therefore be entitled to compensation of Rs.5,60,207 for the permanent disablement suffered in the accident. This amount shall be over and above the expenditure of Rs.46,127/- incurred in the treatment of the claimant. The Insurance is therefore liable to pay a compensation of Rs. 6,06,334/- with interest @ of 7.5 % per annum from the date of application.

The Insurance Company (O. P. No. 2) in the Court below is directed to make the payment of the compensation amount to the learned Tribunal within a month of this order. The Tribunal shall disburse the amount to the claimant after proper identification.

Cross objection is dismissed

The appeal is allowed as at above.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 10th February, 2022.

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