

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.90 OF 2007
with
CROSS OBJECTION STAMP NO.29919 OF 2007

	The New India Assurance Co. Ltd. Gurudwara Bldg, 2 nd floor, Dr. Ambedkar Road, Dadar, Mumbai 400 014. 130700/31/00/07575 VT 27-10-2000 to 26-10-2001	...	Appellant (Orig.Insurers)
	versus		
1	Dr.Rajashree M. Narvekar aged 39 years, residing at 15, B Wing, Kaizer Apartments, Deoulwadi, Off. Sahar Road, Chakala, Andheri (East), Mumbai 400 099.		
2	R. R. Goswami, 1, Kabir Nagar, Chakala Sahar Road, Andheri (East), Mumbai 400 099.	...	Respondents (Respondent No.1 is the orig.applicant and Respondent No.2 is the orig Opp. party)

Ms. Poonam Mital, Advocate for the Appellant-Insurance Company.
Mr. Vikas Khanolkar, Advocate for Respondent No.1-claimant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st APRIL, 2024.

Oral Judgment:

SHUBHADA
SHANKAR
KADAM

1. The appellant-Insurance Company has preferred appeal against the judgment and order passed by Motor Accident Claims

Tribunal, Mumbai (for short "the Tribunal). Respondent No.1/claimant has also filed cross-objection for enhancement of compensation. As the appeal and cross-objections are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that the claimant is doctor. To prove her income, she has produced income tax returns on record. As per the said income tax returns, her average yearly income was Rs.68,000/- but the Tribunal has considered her yearly income at Rs.1,25,000/-, which is on higher side. Learned counsel further submitted that the Tribunal has awarded Rs.10,00,000/- for permanent physical disability, Rs.4,00,000/- for pain and sufferings, Rs.4,50,000/- for loss of income which are on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1-claimant that the claimant is MBBS Doctor. Due to accidental injuries, she has suffered 100% functional disability, she has no smelling sensation, she cannot continue her medical profession and she has shut down her clinic but the Tribunal has not considered these facts and has awarded compensation on lower side. Hence, requested to allow cross-objection and dismiss the appeal filed by appellant- Insurance Company.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is the claimant's case that due to accidental injuries, she has suffered 100% functional disability. To prove her case, the claimant – Rajashree Narvekar has examined herself at Exhibit-13. She has stated that, at the time of accident, she was practising her medical profession and was running a clinic at J.B.Nagar, Chakala, Andheri (East). She was the only lady physician in the J. B. Nagar area. At the time of the accident, she was earning a gross income of Rs. 1,25,000/- per annum. She further stated that, after the accident, she is unable to practise her medical profession and she is unable to recollect the medical history of her patients and medicines prescribed to them by her and she finds it dangerous to continue her medical profession. She has further stated that, due to the accident, she has lost tasting sensation in the right half of the tongue. She has also lost smelling sensation completely and because of sodium depletion, she gets cramps/flickers/twitching/body pain/muscular pain. She has further stated that her menses are scanty and her sexual desire has also been reduced. She has further stated that her hearing capacity has reduced and her right ear has been affected more, her vision capacity has also reduced and there is mild blurring of vision and at times, she cannot read small prints. She has stated that there is possibility of getting fits i.e. epilepsy attacks in future and she has been advised anti-epileptic and anti-dizziness drugs for a prolonged period. She has further stated that she has been advised to take special

diet with more salt which would have adverse effect on other organs. She has further stated that due to nasal fracture and blood clotting in the sinus, she has been diagnosed with chronic sinusitis and it has also affected on her beauty and looks. She has further stated that when she gets attack of hyponatremia, she cannot up and walk and her speech becomes slurred. Since the accident, she cannot travel alone and she needs an attendant and, due to loss of memory of recent events, her routine activities are affected adversely. She has further stated that due to the impact of the accident, there is reduction in her thinking capacity and consistent thinking is not possible and she is confused all the time. In cross-examination, she has admitted that in her claim application, she has not stated that she has lost her tasting sensation in right half of the tongue and has lost the smelling sensation completely and because of sodium depletion, she gets cramps, body flickers, body pain and muscular pain. She further admitted that she was not maintaining any register of the patients who were visiting her clinic. She has denied the suggestion that she was not practising before accident for a period of two years.

5.1. In support of her case, the claimant has examined AW3-Dr. Manoj Virani at Exhibit-19. He has stated that he is a Neurosurgeon and the claimant was under his treatment. He has stated that the CT Scan of the head of the claimant was carried out, she had multiple haemorrhagic basal contusions in the right fronto parietal region. She also had nasal

bone fracture and blood in the maxillary and spheroidal sinuses. She was operated on 3rd November 2000 for removal of clots and swelling in the brain. Partial lacerated brain was removed to reduce pressure in the brain. A disability certificate was issued by this witness, it is at Exhibit-20. This witness further stated that the claimant had taken follow-up treatment till January 2005. The special diet, such as more salt in the food was prescribed. He has further stated that due to disability suffered by the claimant, it is possible that the claimant may become irritable and keep herself aloof from the society. Because of the disability, the claimant is likely to commit error of judgment while diagnosing the patient. In cross-examination, he has admitted that the discharge summary was not written by him and it was written under his instructions.

5.2. In support of her case, the claimant has examined her husband AW2-Madhusudan Narvekar. He has stated that, after the accident, the condition of his wife was severe and she has underwent brain operation. After operation, his wife visited hospital on several occasions and visited for consultation to Dr. Virani at his clinic. He has further stated that his wife required special diet. He further stated that his wife was unconscious, there was no cleaning to her teeth by any brush, her teeth were infected and treatment was done for it. After the accident, his wife sometimes used to suddenly get excited over petty matters in the house, she was non-cooperative and left her social activities and she was afraid to go alone anywhere. Due to accident of his wife, he could not

pay full attention to his work and his promotion as Deputy General Manager was denied. Due to the accident of his wife, he has been financially affected. Nothing elicited in cross-examination of this witness.

5.3. While dealing with the issue of disability, the Tribunal has considered 100% functional disability of the claimant. I do not find infirmity in it. In my view, due to accidental injuries, the claimant has underwent operation of her brain. Lacerated part of claimant's brain has been removed. Her clinic has been shut down. There is 100% functional disability of the claimant.

5.4. To prove her income, the claimant has examined herself. She has stated that she was earning Rs.1,25,000/- per annum. She has produced income tax returns of 1999-2000 and 2000-2001 on record. The income tax returns of 1999-2000 shows annual income of Rs.68511/- and income tax returns of the year 2000-2001 shows annual income of Rs.68,833/-. The Tribunal has considered annual income of claimant at Rs.1,25,000/-. In my view, it is on higher side. It is settled principal of law that average income of income tax returns has to be considered. The average income, as per the income tax returns produced on record, comes to Rs.68600/-. I am considering this income as annual income of the claimant.

5.5. While awarding compensation, the Tribunal has awarded Rs. 4,00,000/- for pain and sufferings. It has come on record that part of the

brain of the claimant has been removed, she has lost her tasting sensation and smelling sensation. She has to take salty food. Considering the nature of injuries of the claimant, I am considering additional Rs.2,00,000/- for pain and sufferings.

5.6. The Tribunal has awarded Rs.50,000/- for future medical expenses. It has come in the evidence of Doctor that she needs future medical treatment and it has come on record that the claimant has to take anti-epileptic and anti-dizziness drugs and medicine for life time, hence, I am considering additional Rs.5,00,000/- for future medical expenses.

5.7. The Tribunal has awarded Rs.20,000/- for conveyance. It has come in the evidence of AW2-Madhusudan Narvekar that he had taken the claimant for consultation and medical treatment to various hospitals, hence, I am considering additional Rs.30,000/- for conveyance.

5.8. The Tribunal has awarded Rs.15000/- for special diet. It has come in the evidence of doctor that the claimant requires special diet, hence, I am considering additional Rs.85,000/- for special diet.

5.9. This Court has considered Rs.68600/- as annual income of the claimant, the Tribunal has not awarded future prospects, The claimant has suffered 100% functional disability. As per view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)**, the claimant is entitled for 40% future prospects. I

am considering 40% future prospects.

5.10. The Tribunal has not awarded compensation for loss of amenities of life, I am considering it at Rs.5,00,000/-.

5.11. The Tribunal has not awarded compensation for loss of expectancy of life, I am considering it at Rs.3,00,000/-.

5.12. The Tribunal has not awarded compensation for attendant charges, I am considering it at Rs.4,00,000/- as claimant requires attendance for whole life.

5.13. Considering the above calculations, the claimant is entitled for following compensation :

Particulars	Rs.	Amount
Medical Expenses	Rs.	2,69,030.00
Future Medical Expenses	Rs.	5,00,000.00
Conveyance	Rs.	50,000.00
Special Diet	Rs.	1,00,000.00
Loss of Income	Rs.	10,56,440.00
Pain, Agony and Sufferings	Rs.	6,00,000.00
Loss of Amenities of Life	Rs.	5,00,000.00
Loss of Expectancy of Life	Rs.	3,00,000.00
Attendant's charges	Rs.	4,00,000.00
Total Compensation.	Rs.	37,75,470.00

The Tribunal has awarded Rs.22,19,030/-, if this amount is deducted from the amount of Rs.37,75,470/-considered by this Court, it comes to Rs. 15,56,440/-. The claimant is entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. First Appeal No.90 of 2007 is partly allowed.
 2. Cross Objection (St.) No.29919 of 2007 is allowed.
 3. The claimant is entitled for enhanced compensation of Rs.15,56,440/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 4. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
 5. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 6. The claimant shall pay court fees on enhanced amount as per Rule.
 7. The statutory amount in First Appeal No.90 of 2007 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)