

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 756 OF 1997

Suvarnaben w/o Vinodbhai Shah,
Aged: 58 years, Occu.: Household,
Resident of 9, Sushil Nagar,
Society, Nizampura, Vadodara.

...Appellant

versus

1. Samgramsingh s/o Dariyasingh Rathod,
Driving Licence No. 48458 R.T.O. ,
Udaipur Baze No. 29964, residing
at NagarDelhi Darwaza, Shahibag Road,
Ahmadabad (Gujarath)
(F.A. is dismissed against R. No.1 vide
Addl. Registrar Court's order dated
18/01/2000)

2. The Manager,
Nutan Pravas Co.
Moti Khadki Wersad,
District Gandhinagar (Gujarat)

3. New India Insurance Co. Ltd.,
Br. No. 210101, Ashram Road,
Ahmedabad (Gujarat)

4. Mohammad Hashim Mohammed Sabir,
Age:Major, Occ. : Agri.,
Residing at Hanuman Mohalla,
Taluka Rajpur, District Khargaon (M.P.)

5. Abidali Hatizali,
residing at A. B. Road,
Balsamandh, Taluka Rajpur,
District : Khargaon (M.P.)

6. United India Insurance Co. Ltd.,
Sendlwa (B.R. No. 21106)

...Respondents

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Mr. A. V. Sakolkar, Advocate h/f Mr. V. G. Sakolkar, Advocate for appellant.
Mr. S. V. Munde, Advocate h/f Mr. K. C. Sant, Advocate for
respondent Nos. 5.

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CORAM : N.W. SAMBRE, J.

DATE : 2nd July, 2015

ORDER :

. Present appeal is by original claimant for enhancement of compensation under the provisions of 166 of Motor Vehicle Act.

2. The claimant claims to have travelling in bus bearing registration No. GRX 7828, which met with an accident with Truck bearing registration No. MKO 9056 while on the way to Shirdi in the early morning of 27/04/1990 resulting into grievous injuries to the present appellant.

3. According to the appellant, in the said accident she sustained injuries to her head, neck and cervical incurring permanent disability, resulting into she was required to stop her Beauty Parlour business and sought compensation of Rs. 1,50,000/-.

4. The tribunal against the said claim, awarded compensation of Rs. 38,350/-, feeling aggrieved thereby present appeal.

5. The appellant-claimant based on the injuries and loss of earning because of accident in question sought compensation of Rs. 1,50,000/-, as according to her, in view of serious injuries

suffered by her to her head, neck and cervical, same has resulted into permanent deformity. She has further urged that on the said aspect, as far as medical evidence brought on record was ignored by the tribunal. In addition to above, she has stated that, she was at the relevant time running business of Beauty Parlour with the help of two assistants and because of the accident, she was unable to carry on the said business and as she has incurred permanent disability of 30%, as such has sought enhancement of compensation of Rs. 2,00,000/-.

6. In support of her contention, Mr. Sakolkar, learned Counsel for the appellant would strenuously urge that the appellant examined herself in support of her claim about injuries suffered by her, so also about loss of earning out of her Beauty Parlour business. He would further urge that, another witness P.W. No. 2 Madhavi was examined at Exhibit-32, who deposed about running of Beauty Parlour business of the present appellant, where she was earning around Rs. 2000/- per month. According to learned Counsel for the appellant, the said evidence was ignored by the tribunal while considering the claim for compensation and loss of business.

7. Apart from above, learned Counsel for appellant has invited my attention to the documents at Exhibits Nos. 35,37,38,39,40,41,42,43,44 and 45 which are certificates issued

by the Doctor about diagnosis and treatment to her. According to him, perusal of this documentary evidence would reveal that the appellant has suffered permanent disability resulting into unable to run Beauty Parlour business.

8. While countering the above referred submissions, learned Counsel for the respondent-Insurance Company would urge that, the evidence on record was rightly assessed by the tribunal. According to him, neither Doctor in support of disability was examined nor in support of her business of Beauty Parlour, any documentary evidence is placed on record. He has supported the award delivered by tribunal.

9. Having considered the rival contention of the parties, it is required to be noted that, the tribunal while analyzing the evidence of witnesses has noted that, the accident in question was rightly proved, so also the fact about suffering of injuries by the present appellant. The tribunal then has proceeded to ascertain the aspect of income received by present appellant from the business of Beauty Parlour. The tribunal then, having regard to the evidence has noted that, no evidence is brought on record to establish the said fact, so also any permanent disability and allowed the claim to the extent of Rs. 38,350/-.

10. In view of rival submissions of the parties, I have gone

through the evidence of appellant, who was examined at Exhibit-27. She in her evidence has stated that, she was earning about Rs. 1200/- to 1500/- per month from the business of Beauty Parlour, however, when she was confronted as regards any license to that effect issued by Municipal Corporation or any other documentary evidence, the appellant has failed to produce on record single documentary evidence so as to establish running of said Beauty Parlour business. It is required to be noted here that, though the appellant has examined another witness in her favour namely Madhavi at Exhibit-32, who claimed to have been working with present appellant in assisting her to run and manage Beauty Parlour. It is required to be noted that, the said witness neither brought any order of her appointment nor brought any documentary evidence to demonstrate that, she was receiving any salary from present appellant so as to establish her employment with appellant.

11. Apart from above, it is required to be noted that, the appellant has in clear terms stated that, her both children i.e. son and daughter are married and her husband is working as Superintending Engineer in Gujarat State Government. This aspect of which the Court must take judicial note of.

12. Apart from above, so as to establish disability, the appellant in her evidence has brought on record the documents

pertaining to her medical treatment, opinion given by various Doctors, treatment given to the present appellant pursuant to her injuries in accident, however, it is required to be noted that, so as to establish her disability, she has neither examined any Doctor nor any substantial proof to that effect is placed on record.

13. The tribunal, while dealing with the claim of the present appellant, has considered the entitlement of present appellant particularly, in the background of injuries suffered by her to the extent of Rs. 18,350/- towards medical expenses and Rs. 20,000/- towards pains and sufferings.

14. In my opinion, said findings recorded by the tribunal in the facts and circumstances of the case and particularly in the background of evidence brought on record are just and proper.

15,. No case for interference is made out. The appeal fails, stands dismissed.

[N.W. SAMBRE, J.]