IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 247 of 2014

Smt. Jijabai Bhagvat Bhosale,
Age : 54 years,
Occupation : Trade,
R/o. Ajube Nagar,
Sundarach Colony,
behind Vidyawardhini College,
Dhule, Taluka & District : Dhule. .. Appellant
(Original claimant)

versus

1. Smt. Shobha Phoolchand Varma,
   Age : Major,
   Occupation : Transport Business,
   R/o. New Amarjyoti Trans,
   2 TP Nagar, Indore (M.P.).

2. The National Insurance Company Ltd.,
   Dhule.
   through its Manager at Dhule. .. Respondents
   (Original respondents)

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Mr. Shrikant S. Patil, Advocate, for the appellant.

Respondent no.1 served (Absent).

Mr. P.P. Bafna, Advocate, for respondent no.2 (Absent).

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CORAM : A.V. NIRGUDE, J.

DATE : 21ST JULY 2015

ORAL JUDGMENT :

1. When the appeal was called out, the learned Counsel for respondent no.2, Mr. Bafna, is found to be absent.

2. I heard the learned Counsel appearing for the appellant. I perused the original record of M.A.C.P. No. 166/2007. I also perused the impugned judgment.

3. This appeal is challenging the judgment dated 7th October 2010, awarding to the appellant, a sum of Rs. 75,000/-, inclusive of no fault liability amount, towards compensation with interest at the rate of 9 % per annum, from the date of petition till the amount is realized.

4. The facts leading to this litigation, in short, can be stated as under :-

(a) The appellant was travelling by an S.T. Bus from Malegaon to Dhule. This bus met with an accident on 27th March 2006, at about 6.30 a.m. The accident took place on Mumbai-Agra road. The appellant sustained injuries and was sent to Government Hospital first, and then to private hospital for taking treatment. He claimed compensation of Rs. 2,00,000/- against the owner and Insurance Company of offending vehicle - a truck. The appellant's case was opposed only by Insurance Company of the truck. The defence raised by the Insurance Company was that the accident did not take place only due to negligence of the truck driver, but a third vehicle was involved and so the compensation would not be the sole

liability of the respondent - Insurance Company. The issues between the parties, thus, were, whether the accident took place only due to rash or negligent driving of the truck driver or whether the accident was result of composite negligence of all the vehicles involved.

(b) On one side, the appellant led her evidence and that of an eye witness who was similarly placed passenger of the bus. Both of them asserted that the accident took place because of rash driving of the truck driver. They admitted that a luxury bus was also involved in the accident. As mentioned above, the question was whether it was a case of composite negligence. Such question can be answered only by the drivers of the vehicles which were involved in the accident. The driver of the truck, who could have been a natural witness, did not come before the court. It was necessary for the Insurance Company to record his deposition, in this case, to bring on record, his side of the story. In fact, it was he who knew as to how the accident took place. His deposition would have been the best possible evidence. If his evidence was not brought on record, which was necessary for proving the case of composite negligence, the respondent - Insurance Company had failed in proving their case, that it was a case of composite negligence. With the result, the case of the appellant, that it was the truck driver who was negligent must be held to be proved. The learned Chairman of the Motor Accident Claims Tribunal reluctantly recorded this finding.

5. The next question that arise between parties was, to what amount of compensation the appellant was entitled to. Injured victims of a motor accident are entitled to compensation mainly under two heads; one,

pecuniary loss, and the other one, non-pecuniary loss. In case of pecuniary loss, the Tribunal is under obligation to examine as to how much loss of income the victim had suffered due to injuries sustained by him or her and on the basis of permanent disability suffered by him or her. In addition to this, the Tribunal is also under obligation to find out as to what expenses were incurred by the victim for medical treatment and dietary supplements. The amounts payable as compensation under these heads would cover pecuniary loss. As regards non-pecuniary loss, a Tribunal is required to undertake enquiry as to whether the victim suffered bodily pains, inconvenience, etc. From the judgment, one gets an impression, though rather vaguely, that the learned Chairman disbelieved most of the evidence led by the appellant. The main bone of contention of the learned Counsel for the appellant is, that the appreciation of evidence by the learned Chairman was unsustainable and deserves to be discarded altogether.

6. Let me now take note of the gist of evidence which came on record. In first part, the appellant and her eye-witness narrated as to how the accident took place. The appellant specifically stated that she was sitting in the bus, just behind the driver. She sustained severe impact due to which she suffered injuries to face, right hand and right side of abdomen. She specifically mentioned that she suffered impact to her abdomen. She then stated, that she took treatment in Civil Hospital at Dhule and thereafter she herself got admitted to Dr. Saindane. She also took treatment from Dr. Raghavendra Shah who treated for injuries to her face. She obtained disability certificate from a third Doctor who opined that the appellant suffered 65 % permanent disability.

7. The second part of the evidence is comprised of depositions of five medical practitioners. The first two Doctors treated the appellant after two days of the accident when she got herself admitted in Tushar Hospital. Witness no.2 is Dr. Manoharsing Raghuwanshi, who stated that the appellant was admitted to his hospital on 29th March 2006 and was discharged on 8th April 2006. He stated, that he gave treatment to her. He also stated that the appellant had sustained injury to her right side kidney. He produced on record, case papers.

8. Witness no.3 is Dr. Ramesh Talele who deposed that it was he who issued a discharge card to the appellant when she left Tushar Hospital on 8th April 2006. He also stated that he received Rs. 37,000/- from the appellant towards medical treatment charge. Witness no.4 is Dr. Raghavendra Shah who stated that he treated the appellant on 30th March 2006 onwards. He stated that on careful examination, it was found to him, that the appellant had suffered fracture of lower jaw. He stated that he treated the appellant and received Rs. 24,200/- as his charges. Witness no.5 is Dr. Charudatta Shinde, who stated that he was an Orthopedic Surgeon serving in Civil Hospital at Dhule. He stated that on 21st April 2008, he examined the appellant and having regard to her injuries, he issued disability certificate. He opined that the appellant had suffered 55 % disability.

9. In addition to this, the appellant also stated that she was earning Rs. 5,000/- to Rs. 6,000/- per month from her trade of tailoring. She also stated that she has a tailoring shop at Dhule.

10. No evidence was adduced by the respondent - Insurance Company. In other words, they placed reliance only on the admissions they could get in the cross examination of the appellant's witnesses.

11. Despite all this detail evidence that came on record, the learned Chairman of the Tribunal treated the evidence rather contemptuously. He discarded the evidence of the appellant, that she earned Rs. 5,000/- to Rs. 6,000/- per month, because ‘she did not submit any evidence’ in that respect. What the learned Chairman meant was, documentary evidence. Her deposition, according to him, was not sufficient. She stated that she had a shop and was doing the trade of tailoring. This was a statement on fact. The learned Chairman had no reason to discard this evidence as untrustworthy, only because there was no documentary proof. He ought to have realized that tailors and allied workers get renumeration in cash. Such renumerations are in smaller amounts and receipts are not recorded. An amount of Rs. 5,000/- to Rs. 6,000/- per month is small amount. The Tribunal should not have expected documentary evidence, such as, counterfoils of cash memos, to substantiate such claim. The learned Chairman ought to have taken a pragmatic view and ought to have accepted the word of the appellant on this point.

12. Besides, the opponent - Insurance Company did not have scope to contest the claim on all grounds. Even assuming that having regard to the provisions of Section 170 of the Motor Vehicles Act, 1988, that the respondent - Insurance Company could have contested the petition

on all grounds, yet the admissions that have come in cross examination are meagre and few. As stated above, the Insurance Company did not bring independent evidence on record. The finding on the question of monthly income of the appellant ought to have been recorded as Rs. 5,000/- per month. The age of the appellant was the next question. The learned Chairman rightly held that the appellant's age at the time of accident could be 54 years.

13. Despite depositions of five medical practitioners on record, the learned Chairman held that the disability certificate issued by Dr. Charudatta Shinde should not be accepted at all. The learned Chairman opined that the fracture to the jaw suffered by the appellant was not due to the motor accident. This conclusion is drawn only because in the initial injury certificate, fracture to jaw is not mentioned. This circumstance is sufficiently explained by Dr. Raghavendra Shah, who stated that on 30th March 2006, on careful examination of the patient, he found that there was fracture to the appellant's jaw. This was discovered only three days after the accident. It can safely be concluded that the Medical Officer who examined the patient immediately after the accident, must have lost sight of this fracture.

14. Nonetheless, the circumstances narrated above clearly indicate that after the accident on 27th March 2006, the appellant underwent medical treatment for next almost 10 days as indoor patient. During this time, she was treated by various Doctors, one of them was Dr. Raghavendra Shah, who was a Dental Surgeon. The learned Chairman opined that the evidence was not sufficient to hold that the appellant was

entitled to claim compensation on account of expenditure for treatment and also for loss of livelihood. As stated above, he simply brushed aside the evidence and held that he should award Rs. 75,000/- as lump sum compensation to the appellant. To say the least, the judgment of the learned Chairman of the Tribunal is far from satisfactory. There are documents on record, establishing expenses incurred by the appellant during the relevant time on medical treatment. The learned Chairman could not have ignored this evidence for the purpose of calculating amount of compensation. The evidence clearly indicated that the appellant spent Rs. 37,000/- in Tushar Hospital and Rs. 24,200/- on her treatment to jaw and tooth, etc. The total of this amount comes to Rs. 61,200/-. In addition to this, the appellant stated that she purchased medicines from time to time during the treatment period. She produced cash memos. The learned Counsel for the appellant could make total of this. He said that the total amount spent on medicines could be approximately Rs. 5,000/-.

15. The next head under which the appellant was entitled to compensation was, loss of future income. She stated that due to injuries and permanent disabilities she suffered, she had stopped her work as tailor and lost the earning of Rs. 5,000/- to Rs. 6,000/- per month. In a case of this nature, the learned Chairman ought to have assumed an amount towards monthly income. The learned Chairman held that the monthly income of the appellant could be equivalent to that of a housewife, which is Rs. 3,000/- per month. But the learned Chairman did not utilize this amount for calculating loss of income. The loss of income is calculated as per annual income, age and corresponding multiplier, prescribed by the Motor Vehicles Act. In the Second Schedule of the Act, for a claimant

aged 54 years (i.e. Above 50 years but not exceeding 55 years), multiplier of 11 years is prescribed. So, the learned Chairman ought to have awarded Rs. 3,000/-, multiplied by 12, multiplied by 11, which is equal to Rs. 3,96,000/- as compensation towards loss of income.

16. The last head under which the appellant was entitled to compensation was, pain and suffering. The learned Chairman could have awarded, at least, Rs. 5,000/- on this count. The compensation for dietary supplement is not permissible in this case, because the appellant did not adduce evidence to the effect that she was advised dietary supplement and that she consumed dietary supplement.

17. The total amount of compensation to which the appellant is entitled to, comes to Rs. 4,67,200/-, as described below :-

Sr. No.	**Heads**	**Amount in Rupees**
1.	Loss of income	3,96,000/-
2.	Medical treatment	61,200/-
3.	Medicines	5,000/-
4.	Pains & suffering	5,000/-
Total		**4,67,200/-**

18. In the result, the Appeal succeeds and the same is allowed.

The award passed by the Chairman, Motor Accident Claims Tribunal, Dhule, dated 7th October 2010, in Motor Accident Claim

Petition No. 166 of 2007, is modified. Instead of Rs. 75,000/-, the appellant is held to be entitled to Rs. 4,67,200/- [Rupees Four Lacs Sixty Seven Thousand and Two Hundred], towards compensation, plus, 9 (nine) percent interest per annum, on the said amount, till the amount is actually paid to the appellant. While calculating the interest, the amount so far received by the appellant should be excluded.

19. The appellant shall deposit deficit court-fees, as per rules, within six months from today. Office shall calculate the deficit court-fee.

20. Appeal is accordingly disposed of.

(A.V. NIRGUDE)
JUDGE

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