

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.80 OF 2015
with
CAF/2280/2014

Oriental Insurance Co. Ltd. ... Appellant

Vs.

Sou.Leena Dattatraya Mahamuni & Ors. ... Respondents

Mr.Sanjay Krishnan i/b Leges Consultant for the Appellant
Mr.Y.P. Narvankar for Respondent No.1

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **21st OCTOBER, 2015**

P.C.:

1. The insurance company has filed this Appeal challenging the judgment and award dated 11.12.2013 passed by the member, Motor Accident Claims Tribunal, Pune in MACP No.505 of 2010. Respondent No.1 is the original applicant, who has filed the injury claim for Rs.20 lacs. On 17.1.2009, she was a pillion rider on the motor cycle proceeding towards Jejuri. Another motor cycle viz., Hero Honda motor cycle came from opposite direction in a rash and negligent manner in high speed and dashed the motor cycle of the applicant which was driven by her husband. Both the applicant and husband sustained injuries. She suffered head injuries and became unconscious. She spent nearly Rs.3 lacs for medical treatment and travelling expenses. She was admitted in Noble hospital at

Hadapsar. It is also the case of the applicant that she was holding M.Sc. Degree in Organic Chemistry with First Class and was working as a Lecturer earlier and at the time of accident, she was taking special tuitions for Science graduate students and earning Rs.15,000/- per month by way of income. Due to the accident injury, there was a mental and physical damage to her. The opponent No.1 or Respondent No.2, who is the owner of the other motor cycle appeared and filed written statement. He denied that the accident has taken place because of rash and negligent driving on the part of the Hero Honda motor cycle. It was contended that suddenly a dog came in the way in front of the motor cycle and therefore, the driver of the Hero Honda moved motor cycle towards right side, however, met with the accident. The insurance company also filed written statement and denied that there is negligence on the part of the driver of the Hero Honda motor cycle and submitted that it was not his negligence. The application was allowed and the learned Member, Motor Accident Claims Tribunal, Pune granted compensation of Rs.19.93,000/- that is nearly the full claim amount with 8% interest p.a.

2. The learned Counsel for the insurance company has submitted that it is a case of contributory negligence that the award granted is excessive and exorbitant. The driver of the Hero Honda motor cycle was not at fault. It was an unavoidable accident. So the driver of Hero Honda motor cycle alone cannot be held responsible. He argued that the learned Member of

the Tribunal has committed error in holding that there was 100% functional disability. He submitted that the Doctor has certified 50% permanent disability due to the accidental injuries that should have been accepted by the learned Member. There was no need to accept it as a 100% disability. He further challenged the earning of the injured applicant. He submitted that in the evidence, the applicant did not produce any document to show her monthly income was Rs.15,000/- or Rs.10,000/- and therefore, the Tribunal should not have accepted such a high claim of her monthly earning and should not have fixed at Rs.1 lakh annual income. The amount of Rs.1 lakh as annual income is imaginary and arbitrarily fixed and thus, the amount granted of Rs.19,93,000/- is to be reduced.

3. The learned Counsel for the respondent opposed this application. He submitted that the applicant has examined herself; filed her examination in chief wherein she has stated that she was working as a Lecturer in P.Jog classes and also in one Senior College as a Lecturer in Chemistry from 2000 to March 2007 and was earning Rs.10,000/- per month as a lecturer. Thereafter, she started taking tuitions as it meant drawing more money. He claimed that she was earning Rs.15000 to Rs.18,000/- per month. He further submitted that on the point of incident, the applicant has denied that her husband was rash and negligent. He pointed out that in the evidence of Sanjay Tulshiram Inanke, the witness of opponent No.2, driver of the Hero Honda vehicle has stated that a dog

came in the way and therefore, he took the vehicle towards the right side. On the point of disability, he pointed out that the applicant examined one Dr.Chandrashekhar Raman, who certified 50% disability in the applicant so also Dr.Suresh Laxman Dabadgaonkar deposed about the medical expenses incurred by the applicant. He further submitted that the applicant has suffered head injury. She has undergone till today, three operations and 4th operation is now fixed within a couple of months. A gap i.e., a portion of her skull is required to be replaced in this prospective operation. He submitted that considering all the medical expenditure and the loss of income, the Tribunal has rightly given the compensation.

4. Perused the impugned judgment and award so also the notes of evidence of all the witnesses. Sanjay, the witness of opponent No.2, who was driving Hero Honda motor cycle, has stated that when he was driving the motor cycle, a dog came in between. So he took his vehicle on the right side. He has stated that the other motor cycle was coming from the opposite side and that it was driving to its left side. In his deposition, he has stated that the road was straight but it was descending. Thus, the motor cycle of the applicant was ascending the road and thus, it appears that the hero honda motor cycle was in speed. The applicant has denied any instance of dog coming in the way of the hero honda motor cycle. Considering this, it appears that the driver of the hero honda motor cycle was rash and negligent and in high speed.

5. The fact that she has suffered 50% disability, is not disputed. However, the Tribunal held that she had suffered 100% functional disability. For that purpose, the evidence of the Doctor is read carefully. Dr.Chandrashekhar Raman has stated that the patient is able to perform routine work, however, he has further stated that the patient will not be able to concentrate on her work. He has further stated that in the present case, the treatment required is life long and there is no possibility of reduction of permanent disability. The applicant has sustained head injury and therefore, there is a damage to her brain. It is stated by her that it has resulted into loss of memory to certain extent and she is unable to concentrate. She is a M.Sc. degree holder in Organic Chemistry. Teaching is not only a manual work but it includes both intellectual and manual exertion. Undoubtedly, a person requires high degree of concentration while performing academic work. If she is not able to perform this work because of the head injury, then, the view taken by the Tribunal that there is 100% functional disability is a correct view. It is submitted that she did not produce any proof of her income. However, considering her evidence that she is an M.Sc. first class in Organic Chemistry and she was working as a Lecturer, I do not find why she should not be disbelieved. She has produced one certificate from Senior College of Baramati which shows that she worked there as a Lecturer. Though she has not produced any income certificate or any document showing that she was taking tuitions, it

can be considered that a person who takes tuitions and works as a lecturer for higher class students, is bound to earn at least Rs.10,000/- per month. If a person is taking tuitions, hardly any account is kept in such private tuitions and therefore, the Tribunal has considered Rs.1 lakh as annual income and as such, it cannot be faulted with.

6. Considering her age, the multiplier is fixed at Rs.15000/- which is also correct. Thus, the Tribunal has computed the amount of loss of future earning as Rs.15 lacs and it accepted Rs.3 lacs as her medical expenditure. It is to be noted that in this case, as she has sustained head injury and continuously undergoing operations, the amount granted towards the compensation is just and adequate and hence, cannot be interfered with.

7. Accordingly, the appeal is dismissed.

(MRIDULA BHATKAR, J.)