

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

**FIRST APPEAL NO. 583 OF 2001
WITH
CIVIL APPLICATION NOS. 625 & 11597 OF 2016**

Ms Sunita Anand Gaikwad, Minor – 17 Years,
Through her father and next friend Shri
Ananda Sakharam Gaikwad, Aged 50 Years,
Occupation Service, Resident of Naland
Kutir, Mahakkali Road, Near Bal Gond
Chawl, Andheri (East), Mumbai – 400 093

APPELLANT

V E R S U S

1 Ramesh J. Thakkar, Aged Major, Occupation:
A-6/70, Flat No. 24, LIC Colony, Borivali (W),
Mumbai

RESPONDENTS

2 The New India Assurance Company Ltd.
New India Assurance Building, 87, M.G.
Road, Fort, Mumbai – 400 023

*Ms. Monali Patil, Advocate holding for
Mr. S.D. Kulkarni, Advocate and
Mr. V.S. Bedre, Advocate for the Appellant
Appeal dismissed as against Respondent No. 1
vide Court's Order dated 23.09.2003
Mr. Swapnil S. Dargad, Advocate, holding for
Mr. S.G. Chapalgaonkar, Advocate for Respondent No. 2*

CORAM : A.V. NIRGUDE, J.

DATE : 24th August, 2016

ORAL JUDGMENT :

1. This Appeal challenges Judgment and Award dated 13th September, 2000, passed by the Member of the Motor Accidents Claims Tribunal, Ahmednagar in Motor Accident Application No. 424 of 1990. The Appellant was the applicant.

2. ***Facts leading to this litigation, in short, can be stated as under:-***

Appellant-Sunita in 1990 was seven years old. She was a Second Standard student. She met with a motor accident. She sustained serious injuries to her limbs and head. She was hospitalized and treated for quite sometime. The application for compensation was moved by her father in 1990, but unfortunately it remained pending before the Tribunal for 10 long years. It was ultimately disposed of on 13th September, 2000, by which time Sunita was 17 years old. On perusal of the said Judgment and record of the lower Court, I realized that Sunita's misfortune continued till today. The evidence that was recorded on her behalf was of her father's deposition. No other evidence came on record. This is a case where expert's evidence and opinion was required to be brought on record to indicate as to what extent Sunita suffered permanent disability. The evidence indicated that both the legs and hands of left side sustained injuries. In addition, she also suffered head injury. Certain doctors provided medical treatment to her. Sunita's father indicated to the Court through his deposition that Sunita has lost her memory and her performance in the School after the accident was declined. It is also

mentioned that the strength of her limbs got considerably reduced. In such situation, the permanent disablement suffered by her can be stated only by an expert medical practitioner. As said above, despite pendency of the case for 10 long years before the Tribunal, no expert was examined. This resulted into the impugned Judgment in which no compensation was awarded for loss of earning for physical strength.

3. In my view, the Appeal deserves to be allowed by remanding the case back to the lower Court where proper evidence would be led. Sunita, who is now major, can even enter the witness-box and describe her disabilities. In support of this, as indicated above, Expert's opinion can be brought on record. I think this case requires attention of a keen legal practitioner. Hence, following order is passed.

O R D E R

- A) Appeal is allowed.
- B) The Judgment and Order dated 13.09.2000, passed by the learned Member of the Motor Accidents Claim Tribunal, Ahmednagar in M.A. Application No. 424 of 1990 stands set aside.
- C) The case is remanded back to the Tribunal.
- D) The Chairman of the Tribunal himself should promptly take-up this case for hearing and should as far as possible

dispose it off within a period of 12 (twelve) months by giving liberty to lead fresh evidence.

In view of disposal of first appeal, Civil Application Nos. 625 of 2016 and 11597 of 2016 stand disposed of.

(A.V. NIRGUDE, J.)

srm/24/8/16