

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 322 OF 2002

Maina D/o Maroti Nalapalle.
Age- 17 Years, Minor U/G-ship
of real mother ANUSAYABAI
W/o Maroti Nalapalle, Age-40
Years, Occu-Agriculture,
R/o BORGAON [Thadi], Post-Alandi,
Via-Shankarnagar, Tq- Biloli,
Dist-Nanded.

**....Appellant.
Ori. Claimant.**

Versus

1. Maharashtra State Road
Transport Ltd., Bombay THROUGH
its Divisional Controller,
Divisional Office, Workshop,
Nanded.
2. Ganesh S/o Rakaji Dugane,
Age-Major, Occu-Business,
SECOND ADDRESS
Ganesh S/o Rakaji Dugane,
Age-Major, Occu-Business &
Owner of Jeep No. MH-21/A-8732,
R/o Mudgaon, Tq-Biloli,
District-Nanded.
3. The Manager,
The New India Assurance Co. Ltd.,
Branch Office, Shivaji Chowk,
JALNA, Taluka & Dist-Jalna.

....Respondents.

Mr. V.D. Patnoorkar, Advocate, for appellant.

Mr. Syed Parver h/f Mr. V.B. Bilolikar, Advocate for respondent No.

2.

Mr. A.G. Kanade, Advocate for Respondent No.3.

CORAM : T.V. NALAWADE, J.

DATED : 14th January, 2016.

JUDGMENT :

1) The appeal is filed by original claimant from Claim Petition No. 126/1996, which was pending before the Claims Tribunal, Nanded. In injury claim, the amount of compensation of Rs. 50,000/- is awarded by the Claims Tribunal and so, the decision is challenged by the original claimant for enhancement of compensation.

2) It is the case of appellant/claimant that she was aged about 13 years at the relevant time and she was receiving education. It is her case that in the accident, she sustained many injuries, which include the fracture injuries to her hand and injuries to the face. It is her case that due to injuries to the face, there is permanent disfiguration of the face and she is suffering from permanent disability due to fracture injuries sustained to two bones of right hand like humerus and radius. It is her case that due to the injuries, her earning capacity has come down and her marriage prospectus have also come down. She had claimed compensation of Rs. 1,00,000/-.

3) Before the Tribunal, the claimant examined herself and she examined a doctor to prove the injuries and disability.

The relevant record is proved as Exhs. 65 and 66. The evidence is sufficient to prove that there was fracture of shaft humerus and there was fracture of radius right. The certificate of permanent disability in respect of fracture injury shows that the movements of the right hand are restricted and so, there is permanent disability to the extent of 30%. It appears that there was handicap certificate in which the extent of permanent disability was mentioned as 10% (Exh. 65). In view of the inconsistency in the two disability certificates, the Tribunal held that there was exaggeration done and so, not much amount of compensation is given. It is presumed that the percent of disability, at the most, can be 10%. Though the Tribunal has seen the scar of injury on the face of claimant, it is observed that the scar is likely to fade away and by doing plastic surgery, it can also be removed. However, nothing is given for such plastic surgery by the Tribunal. The Tribunal has given amount of Rs. 15,000/- under the head of medical treatment, amount of Rs. 10,000/- is given for pain and suffering and amount of Rs. 25,000/- is given under the head of permanent disability. Nothing is given under the head of loss of future income. Even if notional income is presumed for the year of the accident i.e. year 1995 and after considering the age of the claimant, the compensation amount under the head of loss of earning is calculated, that

amount is certainly more than Rs. 25,000/-. Further, the Tribunal has not considered the aspect that the claimant was aged about 13 years, unmarried girl and due to the accident and aforesaid injuries, her marriage prospectus are certainly affected. This Court holds that under the head of loss of marriage prospectus the amount of Rs. 20,000/- needs to be given. So, this Court holds that the amount of compensation needs to be enhanced by Rs. 45,000/-. In the result, following order is made.

ORDER

- (i) Appeal is allowed.
- (ii) The compensation is enhanced by Rs. 45,000/-. Interest at the rate of 9% p.a. would be payable on the enhanced compensation from the date of petition till the date of realisation.
- (iii) Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

ssc/