

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 519 OF 2001

Santosh Narhar Patil	... Appellant
Vs.	
Irphan Shariph Kirkire & Anr.	... Respondents

Mr. B.G. Tangsali, Advocate for the appellant.
Mr. P.B. Naiknaware, Advocate for respondent no. 1.
Smt. Urmila Sanil, Advocate for respondent no. 3.
Mr. G.S. Hegde, Advocate for respondent no. 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th February, 2016.**

P.C.:

This Appeal for enhancement of the compensation is directed against the judgment and award dated 31st December, 1997 passed by the learned Member, Motor Accident Claims Tribunal, Satara. The appellant was injured in a road accident on 15th June, 1993 at about 4 a.m. on Pune-Bangalore National Highway near Perle village, District Satara. He was travelling in a jeep no. KH-06-9786 and a tempo bearing no. MH-14-5785 came from the opposite direction which was driven by opponent no. 2 and the jeep and tempo collided, in which the appellant got injured. He suffered fracture to his right hand and head injury. His skull was fractured and the wound on the head was sewed with 17 stitches. He was treated by Dr. Purohit at Panvel during the period from 9th July, 1983 to 10th October, 1983 as indoor patient. The appellant is a lawyer and he could not work

for some period, as plastic surgery was conducted on his right elbow and there was loss of income. Thereafter he filed an Application for compensation of Rs.2,00,000/-. The insurance company and opponent no. 1/owner of the jeep appeared in the matter and it was stated that the jeep was insured with opponent no. 3 at the relevant time. Opponent no. 4 appeared in the matter and filed written statement. Opponent no. 2 who was owner of the tempo appeared and the said tempo was insured with opponent no. 3. The insurance company opposed the claim by filing written statement. It denied the claim and took defence that the appellant is not entitled to any amount because he was passenger in the jeep and the jeep was not supposed to carry passengers. The appellant tendered evidence. The appeal against opponent no. 2 was abated. The appellant entered the witness box and gave evidence of the incident and so also about his injuries. He also gave evidence in respect of his treatment and financial loss he has suffered. No evidence is tendered by the insurance company. Thus, it is one witness case. The learned Member of the Tribunal partly allowed the claim and directed opponent no. 1/owner of the jeep and insurance company to pay Rs.23,205.60. Opponent no. 2 and opponent no. 3 is directed to pay Rs.23,205.60 and opponent no. 4/MSRTC is directed to pay an amount of Rs.11,608.80. Thus, total compensation was granted at Rs.58,014/-. Hence, this Appeal.

2. The learned counsel for the appellant has submitted that the learned Member of the Tribunal ought to have considered the loss of income. He further submitted that the appellant had suffered head injury and there is continuous headache. His hand was fractured and it was required to be operated again. He submitted that in the year 2002 his right hand was again operated for the injuries which was sustained due to this accident and he incurred Rs.45,000/- towards the expenditure for operation. The learned counsel submitted that the appellant claims the same amount.

3. The learned counsel for the insurance company opposed the Application and it is submitted that the amount granted by the learned Member of the Tribunal is correct and no more amount can be given.

4. The opponents opposed the appeal and they support the order passed by the learned Member of the Tribunal that the compensation awarded is adequate. It is submitted that the appellant could not prove loss of income and there should not be any enhancement in the amount.

5. Perused the judgment and award. Read the evidence of the appellant and other documents produced herein. The appellant is an advocate. In the year 1993 when the accident has taken place, the

appellant had completed 7 to 8 months on the profession. He has mentioned in the application that his income at the relevant time was Rs.2,000/-. He suffered head injury, so there was continuous headache and therefore, he could not concentrate on the work. His hand was operated not only once but had to undergo second surgery. This shows that the injury was not simple. Though there was injury to his right hand, he suffered head injury and considering the nature of his work, it needs concentration and under such circumstances, I am of the view that the learned Member of the Tribunal has lost sight to take into account to give compensation for "Loss of Income". Considering the nature of the injuries, I hold that loss of income was for a period of 6 months @ Rs.2,000/-, which comes to Rs.12,000/- @12% p.a. from the date of application. It is also to be noted that this claim was decided in the year 1997 and during the pendency of the appeal, the appellant was operated in the year 2002. It is argued at bar that he had to undergo surgery for which he incurred Rs.45,000/- towards expenditure for operation.

6. In support of his submissions, the learned counsel for the appellant filed an affidavit dated 28.1.2016 on the point of medical treatment which the appellant has taken in the year 2007 in the hospital of Dr. Purohit at Panvel. However, the appellant had mentioned that he had a fall in April

2007 and on the same spot, he sustained injury and he had to spend Rs.48,000/- approximately. However, the said fall and injury sustained thereafter can neither be considered as an accident under Motor Vehicles Act nor can it be considered as an offshoot or complication of the accidental injury. Therefore, I am not inclined to grant compensation of Rs.48,000/- towards subsequent injury. However, he is entitled to receive Rs.12,000/- towards loss of income with interest @ 12% p.a. from the date of the application.

7. With this, the appeal is partly allowed.

(MRIDULA BHATKAR, J.)