

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1076 OF 2015

Mrs. Sadhana Pratap Pawar ... Appellant
Vs.
Annasaheb Balu Khot & Ors. ... Respondents

Mr. T.S. Ingale, Advocate for the appellant.
Mr. Ajay A. Joshi, Advocate for respondent no. 1.
Ms. Poonam Mital, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **11th February, 2016.**

P.C.:

This matter is moved by way of speaking to minutes in the order dated 15th January, 2016. On page 6 of the said order, the chart of enhanced amount is required to be corrected, as wrong calculation is shown and the amount of loss of earning of Rs.10,80,000/- is not counted at all though it is mentioned in paragraph 7 of the order. Hence, the chart on page 6 of the order dated 15th January, 2016 is substituted as follows:

1	Expenses towards Medical Treatment	Rs.6,50,000/-
2	Towards Pain and Suffering	Rs.1,00,000/-
3	For Attendant	Rs.1,00,000/-
4	Physiotherapy Treatment (Rs.5,000/- p.m. X 2 years)	Rs.1,20,000/-
5	Diet and Travelling	Rs.1,00,000/-
6	Loss of Amenities	Rs. 25,000/-
7	Inconvenience and Deprivation of enjoyment of life	Rs.1,00,000/-
8	Loss of future income	Rs.10,80,000/-
	Total amount of compensation entitled for	Rs.22,75,000/-
	<u>Less</u> : Compensation awarded by the Tribunal and received by the appellant	Rs. 8,69,200/-
	Total enhancement of compensation	Rs.14,05,800/-

2. The respondent nos. 1 and 2 are liable to pay jointly and severally this amount of compensation.
3. The original order stands corrected accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1076 OF 2015

Sadhana Pratap Pawar ... Appellant
Vs.
Annasaheb Balu Khot & Ors. ... Respondents

Mr. Tejpal S. Ingale, Advocate for the Appellant.
Mr. Ajay Joshi, Advocate for respondent no. 1.
Ms. Poonam Mittal, Advocate for respondent no.2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **15th JANUARY, 2016**

P.C.:

Admit. The learned counsel for the respondents waives service. By consent, the Appeal is heard and decided finally at the stage of admission.

2. This Appeal is directed against the order dated 1st September, 2007 passed by the learned Member, Motor Accident Claims Tribunal, Sangli in M.A.C.P. No. 148 of 2006 thereby giving compensation of Rs.8,69,200/- with interest @7.5% p.a. This is an injury claim. The claimant has applied for compensation of Rs.22,96,000/- before the Tribunal. Hence, this Appeal is preferred for enhancement of the claim.

3. The accident took place on 5th December, 2005 near village Kurlup, Taluka Walva, District Sangli. The applicant was proceeding to her village Kurlup on her scooter no. MH-10/AE-530. At that time, one motorcycle

loaded with sugarcane came from the opposite direction in rash and negligent manner, so the applicant took her scooty to the extreme left of the road to avoid accident but suddenly one tractor bearing registration no. MTK-9361 with two trailers bearing registration nos. MH-10/H-4502 tried to overtake the scooty from wrong side, i.e., from the left side of the scooty in an excessive speed. The tractor was driven in a zig-zag manner, due to which the metal rope of the trailer stuck to the left ear of the appellant and her ear was pulled in such a force that it was detached from the head and she fell down between two trailers. Her saree got entangled and rolled with right wheel of the trailer and she was dragged upto a distance of 15 to 20 ft. in speed, due to which, her inner muscular portion of both the legs from toe to thigh were completely torn away from the bone. She was admitted in the hospital for a long time. Today she is bedridden and not in a position to stand. Hence, injury claim was filed by her. As per the appellant, the amount granted was very less, hence this Appeal.

4. The point of determination is that considering the injuries sustained by the appellant and her future medical treatment and loss of income, whether the amount of compensation is just and adequate.

5. The learned counsel Mr. Ingale for the appellant submitted that this is an injury claim of the appellant, who is completely bedridden. Today also, she is undergoing various operations and treatments to recover. At

the relevant time, she was working as clerk in Kasegaon Shikshan Santha Milk and Vetenary College, Astha and was drawing gross salary of Rs.5,954/- p.m. She has also received appointment letter dated 25th June, 2006 for the post of Assistant Teacher from Shri Hanuman Shikshan Prasarak Mandal in the pay scale of Rs.7,940/- p.m., i.e., subsequent to the incident. The learned counsel submitted that the trial Court ought to have considered her future income, as there is 100% loss of income. The trial Court has failed to appreciate the evidence on the point of 100% disability. The learned counsel demanded that loss of amenities should be Rs.3,00,000/-, physical pain and suffering Rs.1,00,000/-, future medical treatment Rs.8,64,000/-, conveyance Rs.2,16,000/-, physiotherapy Rs.4,32,000/- and for attendant Rs.4,55,000/-. The loss of future income ought to have been given Rs.19,44,000/-. The learned counsel submitted that the High Courts and Supreme Court in various cases has granted more amount in such injury cases. Thus, he submitted that the appellant today claims Rs.43,86,000/-.

6. The learned counsel for the insurance company opposed the Application and has submitted that the claim granted is appropriate and it cannot be granted more. He further submitted that the appellant was not working at the relevant time. Her salary certificates which are produced were not accepted by the trial Court and she being the housewife, her notional income was rightly considered as Rs.3,000/-. She is also given

90% of the medical expenses. Under such circumstances, there is no need to give any enhancement in the compensation.

7. The appellant was 25 years old. She was married and having children. It is a most unfortunate accident and the manner in which it took place is horrifying. The appellant has undergone lot of pain and suffering at the time of accident and thereafter. Thus, there is no dispute in respect of occurrence of incident and the injuries sustained to the appellant.

8. This is an appeal only for enhancement. The factors which have bearing over the amount of compensation are to be considered. It is necessary to consider whether the appellant was earning or not. After going through the evidence tendered by the appellant, it appears that her husband Pratap Pawar has entered the box and stated that his wife is unable to walk and travel and, therefore, he deposed on her behalf. On the point of her education and earning, he has stated that his wife is B.A. & B.Ped and at that time, she was working as a clerk in Astha school and getting salary of Rs.5,954/- per month. After her school, she used to run Karate classes and was getting income of Rs.11,500/-. PW-2 Ranjit Pandurang Patil, who was working as Secretary in Hanuman Shikshan Prasarak Mandal, Kurlup is examined. He has stated that Sadhana Babaso Patil is maiden name of Sadhana Pratap Pawar and she was appointed on the post of Assistant Teacher in the year 2006 in the pay

scale of Rs.7,500 - Rs.9,000/-, however, she did not join the school. Her salary certificate showing that she used to receive gross salary of Rs.5,954/- from Astha school is produced. The fact of her education is not disputed. The salary certificate produced by Astha school shows that her basic salary was Rs.3,050/-. In respect of Karate classes, no evidence that she was qualified karate teacher is tendered, so that income cannot be considered. Considering her basic salary at the relevant time and as she had more opportunity of better employment in future, I am of the view that her salary including her future prospects was to be fixed at Rs.5,000/- p.m. As she was 25 years old, it is to be multiplied by 18, which comes to Rs.10,80,000/-. On the point of her injury and disability, PW-4 Dr. Avinash Patil is examined. He is practicing at Sangli since last 20 years as a plastic surgeon. The appellant was admitted in his hospital and Dr. Patil stated that there was blood loss due to multiple injuries. She lost her left ear and sustained CLW over parital region, skull deep. There was total degloving of skin over right forearm and both the legs. Her muscles and tissues were completely crushed. The knees joints were exposed. She was admitted on 5th December, 2005 and discharged on 6th April, 2006. Dr. Patil stated that he carried out 12 operations on her. She was continuously in semi ICU for 15 days and he gave bill of Rs.3,90,480/-. He also stated that nearly Rs.2 lakhs were spent for correction of her deformalities. She was having 94% disability. He has stated that

considering her injuries, she has suffered a lot and was advised to take a very high protein diet. He has further stated that the appellant will not be in a position to serve as a teacher and she cannot walk, sit or climb properly. She cannot pass her motions properly. She will not be able to prepare the food and he advised her physiotherapy. The photographs produced before me disclosed that the appellant's legs and hands have deformed due to lot of injuries all over her body. She cannot lead normal life. She needs to take physiotherapy. It is necessary for the Tribunal to take into account the age of the injured and nature of her disability and injuries. In the present case, her legs and one hand are completely deformed. The doctor has opined that she would not be able to sit properly and walk of her own. This complete dependency she is going to experience throughout her life. She is totally deprived of experiencing the pleasures in simple normal things of walking, eating, running and also other physical pleasure. At the age of 25 years, she met with such a ghastly accident and if her life span is considered upto 60 years, then she will be leading her life in such traumatic condition nearly for 30 to 35 years. Introduction of new and advance technology in medical field in future is always possible and she may get good treatment to recover from her disability. However, as on today, she is more or less bedridden person. Therefore, I am inclined to give her full amount or little more amount than what she has claimed. The claim under different heads is required to be

enhanced as under:

1	Expenses towards Medical Treatment	Rs.6,50,000/-
2	Towards Pain and Suffering	Rs.1,00,000/-
3	For Attendant	Rs.1,00,000/-
4	Physiotherapy Treatment (Rs.5,000/- p.m. X 2 years)	Rs.1,20,000/-
5	Diet and Travelling	Rs.1,00,000/-
6	Loss of Amenities	Rs. 25,000/-
7	Inconvenience and Deprivation of enjoyment of life	Rs.1,00,000/-
8	Loss of future income	Rs.10,80,000/-
	Total amount of compensation entitled for	Rs.22,75,000/-
	Less : Compensation awarded by the Tribunal and received by the appellant	Rs. 8,69,200/-
	Total enhancement of compensation	Rs.14,05,800/-

The respondent nos. 1 and 2 are liable to pay jointly and severally this amount of compensation.

9. The interest awarded is 7.5%. However, in view of the judgment of Division Bench of this Court in First Appeal No. 445 of 2015 dated 11th August, 2015 wherein the Division Bench has fixed the rate of interest at 9%. Relying on the said ratio, I increase the rate of interest from 7.5% to 9% p.a. from the date of the application.

10. First Appeal is allowed.

(MRIDULA BHATKAR, J.)