

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.629 OF 2004

1. Mehrunissa w/o. Mohd.
Farhat Deshmukh,
Age: 47 years, Occu. H.H.
R/o. Khorli Galli, Latur,
Tq. & Dist. Latur = **APPELLANT**
(Orig. Claimant)

VERSUS

1. Hazarat Dastagir Kazi,
Age: 35 years, Occu. Truck Driver,
R/o. Akulj, TQ. Malshiras,
Dist. Solapur,
2. The Managing Director Sakhar Maharshi
Shankarrao Mohite Patil
Sahakari Sakhar Karkhana Ltd.
Shankar Nagar, Akulj, Tq. Malshiras
3. The United India Insurance Co. Ltd.
Through it's Branch Manager,
Main road, Latur
4. Jiya Ahmed Khan s/o. Gulamali Khan
Age: 35 years, Occu.: Business
R/o. Paithan Road, Aurangabad
R/o. Silk Mills Compound
5. The New India Assurance Co. Ltd.
Chandra Nagar, Latur = **RESPONDENTS**

Mr. R.B. Deshmukh, Advocate for Appellant;
Mr. D.A. Madke, Adv. h/f. Mr.S.Y. Mahajan, Adv.for
Respondent No.4
Mr. R.K. Jahagirdar and D.H. Jahagirdar Adv.for
Respondent No. 1 & 2.
Mr. A.O. Soman, Adv. h/f. Mr. D.V. Soman, Adv.for
Respondent No.3;
Mr. Dhananjay Deshpande, Adv.for Respondent No.5

CORAM : P.R.BORA, J.

DATE : 27th July, 2017.

ORAL JUDGMENT:

1) Heard. Dissatisfied with the amount of compensation as awarded by the Motor Accident Claims Tribunal, Latur (hereinafter referred to as the Tribunal) in MACP No.212/2001, the appellant has preferred the present appeal seeking enhancement in the amount of compensation as awarded by the Tribunal.

2) The appellant had filed the aforesaid claim petition claiming compensation of Rs.2,00,000/- on account of the injuries caused to her and resultant permanent disability incurred by her out of the said injuries in a vehicular accident happened on 12th April, 1999 having involvement of a tanker bearing Registration No.MH-13-G-178 and Tata Sierra jeep bearing registration No.MH-01-R-4847. The alleged accident had happened when the appellant was travelling in a Tata Sierra jeep on Pune -

Solapur road and was dashed by the aforesaid tanker.

3) It was the contention of the appellant that in the accident so happened, she received several severe injuries and also incurred a pelvis fracture and was required to be hospitalized for the period of more than a month. It was also contention of the appellant that, she was required to spend huge amount on her medical treatment. The appellant had, therefore, claimed compensation of Rs. 2,00,000/- from the owner and insurer of the tanker as well as owner and insurer of the Tata Sierra jeep. The appellant had placed on record the permanent disability certificate and the medical papers pertaining to her treatment along with hospital and medicine bills.

4) The Tribunal, after having assessed the oral and documentary evidence brought before it, awarded compensation of Rs.45,000/- inclusive of

compensation under NFL to the appellant. Aggrieved by the amount of compensation so awarded, the appellant has preferred the present appeal seeking enhancement in the amount of compensation.

5) Learned Counsel appearing for the appellant, submitted that the Tribunal has manifestly erred in appreciating the evidence on record and more particularly the medical evidence brought on record. The learned Counsel submitted that some unwarranted inferences are drawn by the Tribunal, which have resulted in causing injustice to the appellant. The learned Counsel submitted that, relying on the noting on the Discharge Summary, the Tribunal has recorded a finding that in fact there was no surgery conducted and as such, has also raised certain doubts as about the evidence placed on record by the appellant. The learned Counsel submitted that the appellant had plainly placed on record each and every record which was in her possession

as about her treatment and there was no intention to make any false claim by the appellant. The learned Counsel submitted that though in the Discharge Summary, it may not have been shown that she has undergone the surgery, but the appellant was certainly required to take treatment for fracture of pelvis and for that, sumptuous amount was spent by her. The learned Counsel submitted that the Tribunal has wrongly refused the claim of the appellant in that regard. The learned Counsel further submitted that the Tribunal has also not considered that because of the injuries caused to the appellant and the permanent disability incurred by her because of the said injuries, for whole of her remaining life, she may not be able to work with the same vigor as she was working in the past and she may also not be able to enjoy the amenities of life like a normal person. The learned Counsel submitted that considering all these aspects, the compensation as has been awarded of Rs.45,000/- is wholly unjust and inadequate and deserves to

be adequately enhanced.

6) Learned Counsel appearing for the insurance company has supported the impugned judgment and award. The learned Counsel submitted that the observations made by the Tribunal are based on the documents on record. The learned Counsel submitted that the Discharge Summary clearly depicts that no surgery was carried out on the appellant. The learned Counsel submitted that in such circumstances, the Tribunal has rightly observed that the medical bills which are produced on record, wherein operation charges are also shown, are doubtful. The learned Counsel submitted that the best course for the appellant was to examine the concerned doctor or the concerned person, who has issued the receipts in that regard. In absence of any such evidence on record, the learned Counsel submitted that the Tribunal has rightly rejected the claim of the appellant in that regard. The learned Counsel submitted that even

as about the permanent disability, there was no sufficient evidence on record and the appellant has failed in proving that any permanent loss was caused to her because of the injuries sustained to her. The learned Counsel submitted that the Tribunal has awarded a just and fair compensation to the appellant and no interference is required in the amount of compensation so awarded by the Tribunal.

7) I have carefully considered the submissions advanced by the learned counsel appearing for the appellant and the learned counsel for the respondent – insurance company. I have also perused the impugned Judgment and Award; the evidence and the documents filed on record. I need not to make any more discussion as about the observations made by the Tribunal. However, there appears substance in the submissions made by the learned counsel for the appellant that though in the Discharge Card, there is the remark showing that there was no

surgery conducted, it cannot be outrightly rejected that the appellant was treated for fracture. The documents on record show that the appellant was required to be in the hospital for the period of more than a month. The charges shown as operation charges may be on account of treatment of fracture. Merely because the concerned Medical Officer was not examined, the evidence as placed on record and the document placed on record by the appellant, cannot be outrightly rejected and no distrust can be shown to the evidence produced on record by the appellant.

8) The permanent disability certificate, which has been placed on record, however, does not contain the necessary particulars as about the nature of the permanent disablement. The evidence on record also fall short in drawing any inference as about the actual loss, which may be suffered by the appellant because of the permanent disablement incurred by her in her

working capacity.

9) Nevertheless, after considering the entire evidence on record, it appears to me that some more compensation was required to be awarded to the appellant considering the nature of injuries caused to the appellant and the period of treatment undergone by her and having regard to the fact that because of the injuries caused to her, the appellant may not be able to enjoy the amenities of life in future as a normal person. Though some more evidence could have been adduced by the appellant, even on the available evidence on record, the inferences which emerge necessitate the enhancement in the amount of compensation as has been awarded by the Tribunal. I quantify the said amount to the tune of Rs.25,000/- (Rs. Twenty five thousand) and hold the appellant entitled for the compensation of Rs.70,000/- (Rupees seventy thousand) in total, which according to me, will be the just and fair compensation to be awarded to the

appellant in the facts of the case. The impugned award be accordingly modified. The appellant shall be entitled to receive the interest on the enhanced amount of compensation at the rate as has been awarded by the Tribunal from the date of the claim petition till its realization.

10) The appeal stands disposed of in aforesaid terms. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/