

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

905 FIRST APPEAL NO.4012 OF 2016

Sapna D/o Kashinath Khandekar
Age : 27 years, Occu : Education,
R/o. Plot No.12, Nandanwan Colony,
Dist. Aurangabad

.. Appellant
(Orig. Claimant)

VERSUS

1. Khaja Aminuddin S/o Sk. Mahboob
Age : Major, Occu : Business,
R/o. Plot No. 214, Arif Colony,
Aurangabad
(Owner of Tata Tipper Truck No. MH-12, W-8839)
2. Khaja Nasiruddin S/o Mohd. Nasiruddin
Age : 59 years, Occu : Driver,
R/o Indira Nagar,
New Baijipura, Aurangabad
(Driver of Tata Tipper Truck No. MH-12, W-8839)
3. The National Insurance Company Ltd.,
Through : its Branch Manager,
Branch at Hazari Chambers,
Station Road, Aurangabad
(Insurer of Tata Tipper Truck No. MH-12, W-8839)

.. Respondents
(Orig. Respondents)

...

Advocate for Appellant : Mr. K.B. Jadhav
Advocate for Respondents No.1 & 2: Mr Shaikh Mujtaba Gulam
Mustafa
Advocate for Respondent No.3 : Mr. S.R. Bodade

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**CORAM : P.R. BORA, J.
Dated: July 26, 2017**

ORAL JUDGMENT :-

. The appellant has filed the present appeal seeking enhancement in the amount of compensation as has been awarded by the Motor Accident Claims Tribunal at Aurangabad in Motor Accident Claim Petition No.557/2011 decided on 01.07.2016.

2. The appellant had filed the aforesaid petition claiming the compensation on account of the injuries caused to her and consequent permanent disablement incurred by her in a vehicular accident happened on 12.02.2011 having involvement of a truck bearing registration no.MH-20-W-8839 owned by the present respondent no.1 and insured with respondent no.3 - Insurance Company. It was the contention of the appellant that, the respondent no.2 was at the relevant time driving the offending truck in a rash and negligent manner and gave dash to her while she was proceeding on her scooty bearing registration no.MH-20-AK-8920. It was further contention of the appellant that, in the accident so happened she received several injuries and was required to be under treatment for a long time. It was also the contention of the appellant that, because of the injuries caused to her in the alleged accident, she had incurred 41% permanent disablement. The appellant had therefore claimed the compensation amounting to Rs.54,45,000/- from the owner and the insurer of the offending truck.

3. The petition was resisted by the respondents on various grounds. The learned Tribunal after having assessed the oral and documentary evidence brought before it held the appellant entitled for the total compensation of Rs.13,28,805/- inclusive of NFL compensation jointly and severally from the owner and insurer of the

offending truck. Dissatisfied with the amount of compensation so awarded by the Tribunal, the appellant has filed the present appeal.

4. Shri. K.B. Jadhav, learned Counsel appearing for the appellant submitted that, tribunal has failed in appreciating the evidence on record and resultantly the appellant has been deprived from getting the just and fair compensation. The learned Counsel submitted that, the tribunal has awarded an inadequate sum towards the future loss of income and the sums awarded under the other heads are also inadequate. The learned Counsel submitted that, when the appellant had suffered 41% permanent disablement and the same has been duly proved by her, the tribunal has awarded a meager sum of Rs.41,000/- towards the pain and suffering and permanent disability. The learned Counsel submitted that, towards the diet expenses and transportation also the tribunal has awarded inadequate amount of Rs.20,000/- when the expenses incurred by the appellant were more than Rs.50,000/-. The learned Counsel further submitted that, the tribunal has not awarded the medical bills worth Rs.1,08,239/- only on the ground that, the appellant did not examine the shop owner or the concerned person from pathology lab and the bills are not duly proved by the appellant. The learned Counsel further submitted that, though it was specific case made out by the appellant that, she has lost the prospects of marriage, the tribunal has not awarded any amount under the said head. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation as has been awarded by the tribunal.

5. Shri. Bodade, learned Counsel appearing for the Insurance Company supported the impugned Judgment and Award. The

learned Counsel submitted that, the tribunal after having considered the evidence on record has correctly determined the amount of compensation and no further enhancement is warranted in the amount of compensation as has been awarded by the tribunal. The learned Counsel submitted that, though there is absolutely no evidence produced on record by the appellant as about the actual expenses incurred by her on diet as well as transportation the court has awarded a sum of Rs.20,000/- and the amount so awarded is just and fair. The learned Counsel further submitted that, the tribunal has awarded the medical expenses which were proved by the appellant. The learned Counsel submitted that, the hospital charges worth Rs.1,18,900/- are fully awarded by the tribunal and the bills which were duly proved of worth Rs.63,305/- have also been awarded by the tribunal. The learned Counsel submitted that, the bills which were duly proved were considered by the Tribunal and which were not proved have been rightly kept out of consideration. The learned Counsel submitted that, towards the loss of amenities of life the tribunal has awarded just and adequate compensation of Rs.2,00,000/- and it covers everything and as such nothing more was liable to be awarded under the separate head of marriage prospects etc. The learned Counsel, therefore, prayed for rejecting the appeal filed by the appellant.

6. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment, the evidence on record and the other documents available on record. Insofar as the compensation as has been awarded by the Tribunal towards future loss of income amounting to Rs.8,85,600/-, I do not see any reason to cause any

interference in the amount so awarded. At the relevant time the appellant was taking education and has not completed her graduation also. In spite of that, on the basis of evidence which has come on record believing that, the appellant would have secured a good job and accordingly holding a salary on the notional basis to the tune of Rs.10,000/-, the tribunal has determined the amount of compensation. It appears to me that, the tribunal has taken very reasonable approach and has awarded just and fair compensation under the said head.

7. The another objection has raised about the compensation of Rs.41,000/- awarded by the Tribunal towards loss of pain and suffering. As has been proved by the appellant, she has suffered 41% permanent disablement. The tribunal without making any more discussion having regard to the percentage of disability has awarded the compensation of Rs.41000/-, it appears to me that, some more compensation was required to be awarded under the said head. Having regard to the fact that, the appellant will have to carry the said disability for throughout of her life, I deem it appropriate to enhance the said amount to Rs.75,000/-. Insofar as the diet and transportation expenses are concerned, in absence of any cogent and sufficient evidence placed on record, it does not appear to me that any enhancement is required in the amount of compensation so awarded by the tribunal.

8. Insofar as the hospital expenses are concerned, the tribunal has awarded the entire amount, which was spent by the appellant on hospitalization and the professional charges of surgery etc. The tribunal has also awarded the sum of Rs.63,305/- towards the

medical bills, which were duly proved by the appellant. The tribunal has however declined to accept the other bills, which are filed on record on the ground that, the same have not been duly proved by the appellant. It appears to me that, the tribunal has erred in not considering the said bills only on the ground that, they were not proved by examining any witness in that regard. It has to be stated that, the claimants are not supposed to prove each and every medical bill. The Tribunal has to only see whether the bills are for the same period and whether there is any contrary evidence showing that, the bills so produced may be false or ingenuine. From the evidence on record, it does not appear to me that, any contrary evidence has been brought on record or any suggestion is given that, the bills so produced on record are false or imaginary. There was no reason for the Tribunal to refuse to grant or to decline to grant the amount which the appellant has spent vide the said bills. I, therefore, hold the appellant entitled for a consolidate sum of Rs.One Lakh towards the medical expenses in addition to the medical expenses already granted to her.

9. The next question falls for my consideration is, 'Whether the appellant is entitled to the compensation as has been claimed by her for losing the marriage prospects because of the injuries caused to her in the alleged accident and the permanent disability suffered by her?' I have gone through the evidence of the appellant. In the petition itself and in her testimony before the Court, the appellant had specifically deposed the said fact that because of the permanent disablement incurred by her on account of the injuries caused to her in the alleged accident, she is not getting married and may not get married and has lost the prospects of marriage. The learned Counsel

in support of his contention has relied upon the Judgment of the Hon'ble Apex Court in case of **Dinesh Singh Vs. Bajaj Allianz General Insurance Company Ltd and another [2015 (2) Mh.L.J.] 32** wherein this issue has been dealt with by the Hon'ble Apex Court. In the said matter though compensation was awarded under the heads, 'pain and suffering' and 'loss of amenities in life' the Hon'ble Apex Court additionally granted a sum of Rs.1,00,000/- towards loss of marriage prospects. Though it was sought to be canvassed by Shri.Bodade that, the tribunal has awarded the sumptuous amounts towards the loss of amenities in life and nothing more is liable to be awarded under the head of marriage prospects, in view of the Judgment of the Hon'ble Apex Court in the aforesaid matter, the appellant deserves to be awarded additional compensation under the said head. I deem it appropriate to grant a sum of Rs.1 Lakhs to the appellant under the head of loss of marriage prospects.

10. The appellant is thus held entitled for the total compensation of Rs.11,60,600/-. The appellant will be entitled for the interest on the enhanced amount of compensation at the rate of 9% per annum from the date of application till its realization. In the facts and circumstances of the case, it appears to me that, this will be a just and fair compensation payable to appellant. The award be modified to the aforesaid extent. Deficit Court fees, if any, be recovered from the appellant. The appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)

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