

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

29 FIRST APPEAL NO. 4206 OF 2016

SAU. SHOBHA SHARAD JOSHI
VERSUS
THE MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH DEPOT MANAGER, STATE TRANSPORT DEPT, JALGAON

...
Advocate for Appellant : Mr. Madhav M. Bhokarikar.
Advocate for Respondent : Mr. M. K. Goyanka.
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CORAM : **V. K. JADHAV, J.**
DATE : 10th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 4th July, 2016 in MACP No.432 of 2010, the original Claimant has preferred this appeal to the extent of quantum of compensation.

3 The learned counsel for Appellant submits that Witness Dr. Sachin Ahire has issued two permanent disablement certificates one is marked as Exhibit – 85 and second certificate of permanent disablement is marked as Exhibit – 148. Witness Dr. Sachin Ahire has issued the permanent disablement certificate Exhibit – 85 after examination of Claimant on 13th September, 2010 and accordingly

determined the percentage of permanent disablement to the extent of 20%. Witness Dr. Sachin Ahire again examined the Claimant on 1st August, 2012 and after noticing the evidence of discharging sinus on right leg, redetermined the percentage of permanent disablement to the extent of 45%. The learned counsel submits that the Tribunal has erroneously observed that no document on record about the reassessment of the disability is produced to show that it was discharging sinus on right leg. The learned counsel submits that on the permanent disablement certificate issued in Form Comp. 'B' Exhibit – 148, Witness Dr. Sachin Ahire has specifically mentioned about the discharging sinus on right leg and accordingly redetermined the percentage of permanent disablement as 45%. The learned counsel submits that the learned Member of the Tribunal has erroneously considered the permanent disablement of the Claimant to the extent of 20% and accordingly determined the compensation towards loss of future income. The learned counsel submits that the Appellant / Claimant was doing the tailoring work prior to the accident and getting Rs.6,000/- per month. She was also doing household work. However, the Tribunal has considered her notional income at Rs.4,000/- per month only. The Tribunal has also not awarded the compensation under the head of attendant charges and future medical treatment.

The learned Member of the Tribunal has awarded the meager amount under the non-pecuniary heads such as pains and sufferings etc. The learned counsel submits that the Tribunal has awarded 8% per annum interest from the date of application till realization of the amount instead of 9% per annum.

4 The learned counsel for Respondent / MSRTC submits that the learned Member of the Tribunal has rightly considered that Witness Dr. Sachin Ahire has not placed on record any evidence in the form of radiological examination to substantiate his contentions that the right leg of the Claimant was discharging sinus. In absence of any such evidence, the learned Member of the Tribunal has not considered the oral evidence of Witness Dr. Sachin Ahire and thus, rightly considered the percentage of permanent disablement to the extent of 20% as per the permanent disablement certificate Exhibit – 85. The learned counsel submits that the Tribunal has awarded just and reasonable compensation under the various heads. No interference is required.

5 On careful perusal of the permanent disablement certificates Exhibit – 85 and Exhibit – 148 respectively, it appears that both the certificates have been issued in Form Comp. 'B' and the

Claimant has duly proved those certificates from Witness Dr. Sachin Ahire. Witness Dr. Sachin Ahire has deposed before the Tribunal that initially in the year 2010, he has issued the certificate at Exhibit – 85 specifying therein that the Claimant has sustained the permanent disablement to the extent of 20%. However, again on 1st August, 2012, he has examined the Claimant clinically and radiologically and accordingly issued the certificate Exhibit – 148 specifying therein that the Claimant has permanent disablement to the extent of 45% and thus, redetermined the percentage of permanent disablement. Though Witness Dr. Sachin Ahire has admitted in his cross-examination that the injury described in certificate Exhibit – 85 and Exhibit 148 are identical, however, he has further opined that the sinus was discharging and union was delayed and therefore, he has redetermined the percentage of permanent disablement and mentioned the same by issuing the permanent disablement certificate Exhibit – 148. It appears from both the certificates that the Claimant is suffering from shortening of right leg with decrease range of movement of right knee joint with stiff ankle. It was initially recorded while issuing permanent disablement certificate Exhibit – 85 about the healed sinus, however, two years after issuance of certificate Exhibit – 85, Dr.Sachin Ahire has observed the discharging sinus on right leg and accordingly

redetermined the percentage of permanent disablement to the extent of 45%. There is no reason to discard the expert's opinion. In cross-examination also there is nothing to discard the expert's evidence or to draw any other inference. In view of the above, the Tribunal ought to have considered the percentage of permanent disablement to the extent of 45% for determining the compensation under the head of loss of future income.

6 The Appellant / Claimant has claimed that she was earning Rs.6,000/- per month by doing the tailoring work. However, in absence of any documentary evidence in respect of purchase of sewing machine, the Tribunal has rightly considered the income of the Appellant / Claimant at Rs.4,000/- per month. In view of the same and if the disability as observed above is considered as 45%, the Claimant is entitled for an amount of Rs.3,24,000/- towards loss of future income instead of Rs.1,44,000/- as awarded by the Tribunal. The Tribunal has awarded meager amount under the head of pains and sufferings. The Appellant / Claimant is suffering from shortening of her right leg and delayed union of fracture distal third region of right tibia with ankylosed right angle. There is decrease range of movement of right knee joint. Moreover, the Appellant / Claimant remained hospitalized for near about one month. In view of the same, the Appellant / Claimant is

entitled for an amount of Rs.1,00,000/- towards pains and suffering. Though, the Tribunal has not awarded any amount of compensation towards attendant charges and loss of amenities of life, however, the Claimant is entitled for Rs.10,000/- each on both the counts. In view of the nature of permanent disablement sustained by the Claimant, the Claimant is also entitled for an amount of Rs.50,000/- towards future medical treatment. The Tribunal has rightly awarded the compensation for special diet and for medical expenses incurred by the Appellant / Claimant. In view of the above discussion, the break up of compensation under various the heads as discussed above can be broadly categorized as under:

Sr. No.	Particulars of the head	Amount in Rupees
1)	Towards loss of future income (as against Rs.1,44,000/- awarded by Tribunal)	Rs.3,24,000/-
2)	Towards pains and sufferings (as against Rs.30,000/- awarded by Tribunal)	Rs.1,00,000/-
3)	Towards future medical treatment	Rs.50,000/-
4)	Towards special diet (as awarded by Tribunal)	Rs.10,000/-
5)	Towards attendant charges	Rs.10,000/-
6)	Towards loss of amenities of life	Rs.10,000/-
7)	Towards medical expenses	Rs.2,20,000/-
	Total =	Rs.7,24,000/-

7 The Appellant / Claimant is entitled for the total amount of compensation as worked out hereinbefore. The impugned judgment and award requires modification to that effect. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 4th July, 2016 in MACP No.432 of 2010, is hereby modified in the following manner:

“The Respondents do pay the sum of Rs.7,24,000/- (Rupees Seven Lacs and Twenty-Four Thousand only) to the Claimant inclusive of the compensation awarded under Section 140 of the Motor Vehicles Act with interest at the rate of 9% per annum from the date of application till realization of the amount.”

- III. Rest of the judgment and award stands confirmed.

- IV. Award be drawn up as per the above modification.
- V. The Appellant / Claimant shall pay the deficit Court fees within four weeks from the date of this order.
- VI. Needless to say that if any amount is deposited and paid as per the judgment and award passed by the Tribunal, the same shall be the part of the judgment and award after modification.
- VII. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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