

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1514 OF 2006
WITH
CIVIL APPLICATION NO.473 OF 2017**

Kum.Ratna Narayan Suvarna ..Applicant/Appellant
V/s.
Ajazali Sayeed & Ors. ..Respondents

Mr.Avinash M. Gokhale for the Applicant/Appellant.

None present for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 10 MARCH 2017.

P.C.

1. Heard Mr.Avinash Gokhale, learned counsel for the appellant. The respondent though served, are neither present nor represented.

2. The challenge in this appeal is to the judgment and award dated 24 November 2005, to the extent that the appellant has been denied compensation of Rs.30 lakhs and instead, awarded compensation of only Rs.5,45,000/- together with interest at the rate of 6% per annum from the date of registration of the Claim

Petition till the date of realization of the award. Mr.Gokhale, submits that the MACT has ignored vital evidence on record in the matter of computation of compensation. He submits that the appellant, who was a stenographer in the bank was forced to opt for voluntary retirement, since, on account of the injuries sustained by her in the accident, she was unable to discharge her duties either as stenographer or even as a clerk. By reference to communication dated 20 January 2001 issued by the Bank, Mr.Gokhale points out that the appellant has suffered loss of pay to the extent of Rs.1,24,000/- and a monetary loss of Rs.10,000/-, on account of her reversion as a clerk. Mr.Gokhale points out that in case the appellant had not sustained any injury in the accident and were to have continued in service until she attained the age of superannuation, then, she would have earned benefits, which, in monetary terms would far exceed Rs.30 lakhs. Mr.Gokhale submits that even the officer of the bank was examined in the matter and all these evidence has been virtually ignored.

3. Mr.Gokhale submits that a very paltry amount has been awarded towards attendant charges. He submits that two maids were examined in order to indicate that the appellant had engaged

the services of the maid and was expending considerable amount for the same. Mr.Gokhale submits that the award towards pain and suffering is also quite paltry and contrary to the law laid down by the Hon'ble Supreme Court in the case of *Mallikarjun V/s. Divisional Manager National Insurance Company Ltd. [2014-14-SCC-396]*. He submits that in this case, since, the appellant had admittedly suffered disability between 10% to 30%, she was entitled to be awarded compensation of Rs.3 lakhs and not merely Rs.50,000/-, which has been awarded.

4. Mr.Gokhale submits that the appellant's application under Order 41 Rule 27 of the C.P.C. for production of additional evidence is also required to be taken into consideration. The appellant has produced material, which indicates that the approximate loss suffered by the appellant on account of the injury sustained by her and the subsequent reversion, non-promotion, leave resulting in loss of pay, voluntary retirement due to disability and all such factors comes to Rs.52,17,913/-. Mr.Gokhale submits that the certificate issued by the Municipal Hospital is required to be taken into consideration, to the extent that the disabilities suffered by the appellant was 34% by resorting to the provisions of the Order

41 Rule 27 of the C.P.C. On all such basis, Mr.Gokhale submits that the compensation amount is liable to be enhanced to Rs.30 lakhs and further, interest at the rate of 9% per annum is liable to be awarded to the appellant.

5. As noted earlier, respondents, though served, has chosen not to remain present or be represented. The appeal is of the year 2006. The appeal was duly notified on the cause list. Infact, the appeal was partly heard on the earlier date and was shown today on the cause list as part heard. Despite all this, none of the respondents have chosen to appear in the matter. As such, it will not be appropriate to grant any further opportunities to the respondents.

6. With the assistance of Mr.Gokhale, the evidence on record both oral as well as documentary is perused. The aspect of negligence need not be revisited because, the MACT, has clearly held that the appellant suffered injuries in the vehicular accident which took place on 28-01-1992 on account of rash and negligent driving by the driver of the offending vehicle bearing registration No.MFF-7416, which is owned by respondent No.2. None of the

respondent has questioned this finding of fact, which is even otherwise, borne from the material on record.

7. However, it is pertinent to note that the appellant, in her Claim Petition as originally filed on 29 July 1992 has claimed total compensation of Rs.5 lakhs. However, it is only later, that this claim was amended to Rs.30 lakhs.

8. At this stage, it is not possible to accept the appellant's case that the disability suffered by her was required to be assessed at 34% and not 15%. In the first place, there is no explanation as to why the certificate issued by the Municipal Hospital which is now sought to be produced by resorting to Order 41 Rule 27 of the C.P.C. was not produced and proved in accordance with law before the MACT itself. Secondly, in this case the appellant has not only relied upon the certificate issued by Dr.Vengsarkar, from whom the appellant was taking treatment but also examined him in the matter. Dr.Vengsarkar has deposed that the extent of disability can be assessed at 15%. The MACT has assessed the entire material on record and accepted the evidence of Dr.Vengsarkar and determined permanent partial disability at 15% on account of the injuries

sustained by the appellant to her upper right hand.

9. The claim of the appellant on the basis of document dated 20 January 2001 issued by the bank and even the deposition to the same by the Bank Officer, cannot be accepted in its entirety at the face value. To a great extent, the claim on the score of service benefits is speculative. The claim completely discounts the uncertainties in service, let alone, in life. The claim also ignores the leave record of the appellant herself, which was dismal even prior to her involvement in the unfortunate accident. Infact, the record indicates that for almost 11 months prior to the date of the accident, the appellant was on leave. According to the appellant, such leave was because she suffered from back pain. The status of her leave is a matter of record, both, prior to and after the accident. Accordingly, the appellant cannot be held entitled to compensation as claimed by her on the basis that she would have continued in service until her age of superannuation, but for the injury suffered by her in the accident. The calculations which are basically premised upon such workings, cannot be accepted in the facts and circumstances of the present case.

10. The evidence on record in this case also indicates that substantial portion of the medical expenses incurred by the appellant were borne by the bank or in any case, reimbursed to her. No doubt, over and above, the appellant, must have incurred expenses, for which, the MACT has awarded Rs.1 lakh.

11. The evidence on record also indicates that after the injury, the appellant not only resumed her duties but the bank, realizing that she may not be in the position to discharge the duties of stenographer, offered her the duties as a clerk. The officer of the bank who deposed in her favour i.e. the appellant has categorically stated that there was no reduction in the pay structure and that all benefits, which the appellant was drawing prior to the injury were duly continued.

12. The appellant, almost 2 and ½ years after resuming service, opted for voluntary retirement. In her evidence, the appellant had stated that she waited for 2 and ½ years, since, Voluntary Retirement Scheme was in the offing. It is possible that on account of the injury, the appellant was finding it difficult to continue her services. However, if the material on record is taken

into consideration in its entirety, then the entire blame cannot be apportioned to the accident. This is not a case where the bank removed the appellant from service on account of the injuries sustained by her alleged inability to function as a stenographer or as a clerk. This was perhaps not possible in view of the provisions contained in *The Persons with Disabilities (Equal Opportunities Protection of Rights & Full Participation) Act, 1995*. It is really not necessary to go into this issue because there is no material on record to establish that the appellant was subjected to any adverse service conditions on account of the injuries sustained by her. The leave record of the appellant is also not an irrelevant circumstance, particularly the leave record prior to her sustaining injury. However, it does appear that some discomfiture and loss was occasioned by the appellant and the same has not been compensated in its entirety in the impugned judgment and award.

13. The MACT, after adverting to the percentage of disability suffered by the appellant, has taken the loss of income at Rs.1,500/-. Admittedly, on the date when the appellant suffered the injury, her salary was approximately Rs.5,365/- or thereabouts. There is some material on record to show that the appellant did

suffer monetary loss to the extent of Rs.1,74,000/-. The figure of loss of income computed by MACT at Rs.1,500/- does appear to be on the lower side. On this basis, the compensation towards the disability has been determined by the MACT at Rs.2,70,000/-. However, this award is inadequate and some enhancement is certainly due as against this head.

14. Upon cumulative consideration of the material on record, although it is not possible to accept Mr.Gokhale's contention that the loss of income should be computed in its entirety at Rs.5,365/-, the loss of income was required to be computed at least at Rs.3,000/- per month i.e. double of what has been held by the MACT. On this basis, the appellant will be entitled to additional compensation of Rs.2,70,000/-as against the permanent partial disability suffered by her.

15. Further, the award towards pain and suffering, in the present case is also quite inadequate. Admittedly, the appellant has suffered disability to the extent of 15%. The appellant was required to undergo hospitalization for almost six months. Thereafter, she was also required to take treatment as an outdoor patient for almost

1 and ½ year. Although, her hospital expenses may have been paid for or reimbursed substantially, this does not mean that the appellant did not, undergo any pain and suffering during the entire period. Applying the principles laid down in Mallikarjun (Supra), the appellant is entitled to compensation of Rs.3 lakhs against this head.

16. Towards attendance charges, the compensation of Rs.11,900/- is too meagre. Two maids were examined as witnesses. On the basis of the material on record, it does appear that the appellant had engaged services of maids and it is also possible that the appellant is required to engage such services even in the future. No doubt, injury cannot be the only cause for requiring such service. Therefore, some reasonable compensation has to be paid as against this head. Accordingly, additional compensation of Rs.50,000/- is awarded as against this head.

17. As noted earlier, it is not possible to entertain the claim on the basis that the appellant, but for the injury, would have continued in service and drawn full benefits while in service and upon retirement in the year 2009. This is a case where the

appellant, opted for voluntary retirement and also availed the benefit of such retirement. The material on record also indicates that the bank, did not subjected to any adverse service conditions post the injury. Infact, it is clear that the bank was considerate enough despite, the appellant, having dismal leave record even prior to the date of the accident. The additional evidence which the appellant now seeks to produce, is really, not evidenced in the strict sense and in any case, the circumstances do not warrant the admission of such additional evidence. The appellant in this case, had not only examined herself, but also, the officer of the bank. The circumstances that there are subsequent revisions in pay scale, are really not relevant in the facts and circumstances of the present case.

18. Accordingly, this appeal is liable to be partly allowed. The compensation amount is liable to be enhanced by an amount of Rs.6,20,000/-, in addition to what has already been awarded by the MACT in the impugned judgment and award. The enhanced amount to carry interest at the rate of 6% per annum which is to be paid from the date of filing of the Claim Petition i.e. 29-07-1992 till realization.

19. The appeal is accordingly, partly allowed. The respondents are jointly and severally directed to pay to the appellant an additional compensation of Rs.6,20,000/- together with interest at the rate of 6% per annum from 29-07-1992 till realization. In the facts and circumstances of the present case, there shall be no order as to costs.

20. In view of the disposal of the Appeal, the Civil Application is disposed of accordingly.

(M. S. SONAK, J.)