

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.307 OF 2017

Tejabai w/o Vaijnath Suryawanshi,
Age 38 years, Occupation Household,
R/o Sidhhartha Nagar, Bhalki,
Tq. Bhalki Dist. Bidar (Karnataka).

...Appellant.
(Org.Claimant)

VERSUS

1. Latif s/o Shabbir Shaikh,
Age Major, Occupation Driver,
R/o Jau Tq. Nilanga Dist.Latur.
2. Layak s/o Manumiya Shaikh,
Age Major, Occupation Business,
R/o Shivaji Nagar, AUSA Road,
Nilanga Tq. Nilanga Dist.Latur.
3. United India Insurance Co.Ltd.,
Through its Branch Manager,
Latur Branch, Near Anjani Hotel,
Shivaji Chowk, Latur Dist.latur.
4. Dadasaheb s/o Narad Musande,
Age Major, Occupation Driver,
R/o S. T. Stand, Nilanga Tq.
Nilanga Dist. Latur.
5. M.S.R.T.C.,
Through its Divisional Controller,
S. T. Depot, Tq. Dist. Latur.

...Respondents.
(Org.Respdts.)

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Advocate for Appellant : Mr. S. B. Gastagar.
Advocate for Respondent No.3 : Mr. S. G. Chapalgaonkar
Advocate for Respondent No.5 : Ms. Ranjana Reddy.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
01-07-2019.**

**Date of Pronouncing The Judgment :
23-07-2019.**

JUDGMENT :

1. Present appeal has been filed by the original claimant for enhancement in the compensation granted by Motor Accident Claims Tribunal.

2. The claimant had filed Motor Accident Claim Petition No.16 of 2014 before Ex-Officio Member, Motor Accident Claim Tribunal, Latur, under Section 166 of the Motor Vehicles Act, 1988 for getting compensation. She had contended that, she is 35 year old labour, earning about Rs.6,000/- per month by doing labour work. She was travelling from S.T. Bus bearing No.MH-20/D-9800 with her daughter and grandchild on 10-10-2011 from Nilanga to Latur. When the bus reached near 'Tamberwadi Pati,' one truck bearing No.MH-21/6444 came from opposite direction in high speed and excessive speed and dashed against S. T. Bus. It was contended that, the bus driver was also rash and negligent and then there was a head-on collision between the two vehicles. She sustained grievous injuries to the right elbow joint in the accident. According to her the accident had occurred due to the rashness and negligence on the part of both the drivers. The fact of accident was reported to police. She was shifted

to hospital. She has taken the treatment, however the injuries have turned into permanent disability for her. She is unable to perform her duties as before. The offending truck was driven by respondent No.1 and was owned by respondent No.2 as well as insured with respondent No.3 on the date of the accident. Respondent No.4 is the driver of the bus who was in employment of respondent No.5. Thus, she has claimed compensation of Rs.14,82,000/-, however restricted the same to Rs.2,00,000/- for Court fee.

3. The matter proceeded ex-parte against respondents No.1 and 2, and without written statement against respondent No.4. Respondents No.3 and 5 had filed separate written statements and denied all the averments in the petition. It was denied by respondent No.3 that, the truck driver was rash or negligent whereas respondent No.5 denied that respondent No.4 was rash or negligent. They blamed rival drivers for the accident and prayed for exoneration of themselves. Age, occupation and income of the injured was denied so also the fact that she has sustained permanent physical disablement. The Insurance Company of the truck has taken statutory defences also.

4. Taking into consideration the evidence on record and hearing both sides, the learned Tribunal held that the accident had occurred only due to the rashness and negligence on the part of respondent

No.1 i.e. truck driver. Therefore, the bus driver i.e. respondent No.4 and owner respondent No.5 were exonerated from payment of liability of compensation. It was held that, the claimant has sustained permanent disability to the extent of 10 % only. Compensation of Rs.50,000/- only is awarded against respondents No.1 to 3 jointly and severally, hence this appeal.

5. Heard learned advocate Mr. Gastgar for appellant – claimant, learned advocate Mr. S. G. Chapalgaonkar for respondent No.3 and learned advocate Ms. Ranjana Reddy for respondent No.5. Other respondents though served, failed to appear.

6. It will not be out of place to mention here that, respondents No.3 and 4 who were contesting mainly till the end, have not filed any appeal challenging any of the findings given by the learned Tribunal. The claimant has challenged the finding that she has sustained permanent physical disability to the extent of 10 % only and the calculation based on the same. It has been contended that, very meager amount has been granted to her as compensation. Therefore, taking into consideration these aspects, following points arise for determination, findings and reason for the same are as follows ;

- 1) Whether the learned Tribunal was justified in holding that the claimant had sustained permanent physical disability to the extent of 10 % only ? If not,

then to what extent ?

2) Whether the learned Tribunal was justified in awarding compensation of Rs.50,000/- only to the claimant ?

7. At the cost of repetition it can be said that, there is no challenge to the finding that the accident had occurred due to the sole negligence on the part of truck driver. Under such circumstance, it was required to be seen as to whether the accidental injuries admittedly received by the claimant during the course of the accident had caused permanent physical disability to her. The quantum would be computed on the basis of finding to point No.1.

8. In order to prove the disability, the claimant has examined CW.2 Dr. Sudhakar Gulve who has supported the plaintiff by saying that, his clinical examination showed restrictions in the movements and he found the permanent disability of the claimant to the extent of 37.5%. In his cross-examination CW.2 Dr. Gulve has stated that, the injury involved is around joint elbow. As per the Government manual the disability and impairment of each joint has 30 % power, and then he went on to deny that, he has issued the certificate regarding disability to the extent of 37.5 % is on the higher side. It was tried to be contended that, the claimant can move and do her routine activities as before. What has been opined by the expert i.e.

CW.2 Dr. Gulve that the claimant will not be able to perform her work efficiently. Thus, it is to be noted that though he has given permanent physical disability to the extent of 37.5%, yet it can be gathered from the fact that, he has not come with a case that there was total loss of physical capacity of both the hands to the petitioner. Therefore, the disability certificate which has been produced at Exhibit 46 though says that, claimant sustained physical disability to the extent of 37.5 %, I do not agree with the submission on behalf of the appellant that the appellant has sustained 100% financial loss taking into consideration her occupation as labour. It is to be noted that, no evidence was led by the claimant to show that she is doing agriculture labour work, and therefore, the learned Tribunal did not believe in her words. Since she had come with a case that, she was doing labour work with one Saibaba Vegetable and Fruit Market, Bhalki, even if we considered her as only labour, it was not expected that she would have had some documentary evidence with her to prove the same. There was no reason to disbelieve in her statement that she was doing labour work, may be agricultural labour work on daily wages basis. The learned Tribunal has observed that, she has not clarified as to whether her husband was alive or not and why he could not have earn money for the family. In fact if those were the questions which were in mind of the Tribunal then those could have been put to the

claimant when she was in the witness box by the Tribunal itself. When the witness was available and the questions were not asked, may be as Court questions, then the fact cannot be denied only on the basis of some surmises, therefore, the occupation of claimant as labour is taken as proved. The accident had taken place in 2011, and therefore, it would be appropriate to hold that, she would have been getting at least Rs.4000/- per month. Since the fact that she could not prove her income @ of Rs.6000/- per month, the notional income theory is invoked.

9. As aforesaid what has come on record is that, she has suffered permanent physical disability to the extent of 37.5 %. This cannot be taken as 100 % disability, when in the examination in chief itself the doctor says that she will not be able to perform her work efficiently. Doing work with 'efficiency' is a different thing and total inability to work is another thing. Therefore, at the most it can be stated that, there would be 30 % financial loss to the claimant. On the basis of these observations further calculations are made.

10. Taking into consideration the income of claimant @ of Rs.4000/- per month, in view of decisions in *National Insurance Company Ltd. Versus Pranay Sethi and others*, reported in 2017 SCC Online SC 1270 : 2017 ACJ 2700, the claimant being self employed, 40 % of the said income is required to be added towards future

prospects. Here the age of the claimant is stated to be 35 years when the petition was filed in 2014. No documentary proof about her age has been produced. Under such circumstance the injury certificate Exhibit 34 issued by the Medical officer in which her age has been shown as 35 years is required to be accepted. By adding the said amount, her income would be Rs.5600/- per month. However, as aforesaid she would have sustained loss of income to the extent of 30 % only, that amount comes to Rs.1680/- per month (30 % of Rs.5600/- per month), yearly it would be Rs.20,160/- (Rs.1680/-p.m. X 12 Months). Taking into consideration her age as 35 and the decisions in, *Sarla Verma and others v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121, as well as *Pranay Sethi (Supra)*, the just multiplier in this case would be "16". Thus the total loss of income for the claimant would be Rs.3,22,560/-.

11. It has come on record that, claimant was treated in Government Hospital where there would not have been much expenses to incur, however the possibility that she would have been referred to some other hospital or would have been asked to bring medicines from outside cannot be ruled out. As per the doctor, she was admitted in Government Hospital from 11-10-2011 to 02-11-2011. She has undergone operation for the fracture to elbow. Under such circumstance, under the head of medicine + attendance

+ transportation + pain and sufferings + special diet ; amount of Rs.50,000/- is awarded. Thus, the claimant is entitled to get compensation of Rs.3,72,560/-. The learned Member has granted a very meager amount of Rs.50,000/- when it was duty bound to award just compensation to the claimant, therefore, the case is made out for enhancement. As aforesaid the other respondents have not filed any appeal, the rest of the award deserves to be maintained as it is. Points are therefore answered accordingly. For the aforesaid reasons, following order is passed ;

ORDER

- 1) Appeal is hereby allowed.
- 2) The award passed in Motor Accident Claim Petition No.16 of 2014 by learned District Judge -4 and Ex-officio Member of MACT, Latur, dated 19-10-2016 is hereby set aside to the extent of quantum only and modified as follows;

"The claimant is entitled to receive Rs.3,72,560/- (in words rupees three lakh seventy two thousand five hundred and sixty) (including the amount under no fault liability) from the respondents No.1 to 3 jointly and severally together with interest @ of 8 % per annum, from the date of the petition till actual realization of entire amount."
- 3) Further Clause -3 is modified as follows ;

"The respondent No.3 shall deposit first, the compensation of Rs.3,72,560/- together with

interest accrued and then recover it from respondents No.1 and 2".

- 4) Rest of the award is maintained as it is.
- 5) Claimant to pay the deficit Court fee within a period of one (01) month from the date of this order.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.