

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

FIRST APPEAL NO. 1280 OF 2018

Miss. Sonali Subhash Ranpise
Age : - 33 years, Occ. : Nil,
R/at Room No. 37, 1st Floor, B.M.c.,
L.B.S. Market Building, L.N. Road,
Matunga (E), Mumbai – 400019.
Permanently residing at & Post Vai,
District – Satara.

....Appellant.
(Orig. Applicants.)

VERSUS

1. Mr. Sanghvi Vinod R.
R/at 4th Floor, 412, Sawa Bhauwan,
C.S. 104, Naigaum Cross Road, Dadar TT,
Mumbai – 400014.
2. Iffco – Tokio General Insurance Co. Ltd.
A.F.L. House, Lok – Bharati Complex,
2nd Floor, Marol – Maroshi Road,
Andheri (W), Mumbai – 400053.

....Respondents.

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Mr. Devendranath S. Joshi, Advocate for the Appellant.
Ms. Deepika Prabhala, Advocate i/b. Res. Juris, for the Respondent No.2.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th JUNE, 2019.

ORAL JUDGMENT :

1. Ms. Deepika Prabhala, learned Counsel for the respondent No.2 -
Insurance Company, states that the Insurance Company has deposited the

compensation as per the award and that the Respondent No.2-Insurance Company does not wish to challenge the impugned judgment and award. With consent, the appeal is heard finally at the stage of admission.

2. The appellant who is the original claimant has challenged the judgment and award dated 07.05.2016 in Motor Accident Claim Petition No. 138 of 2007 passed by the Motor Accident Claims Tribunal, Mumbai. By the impugned judgment and order the Claims Tribunal has awarded to the appellant -claimant compensation of Rs.7,60,178/- with interest @ of 9% per annum from the date of the petition till realization.

3. The brief facts necessary to decide this appeal are as under:-

The appellant had sustained injuries in a motor vehicular accident on 30.12.2006, involving motorcycle bearing registration No. MH-01-WA-793. The appellant claimed that the said motorcycle had dashed against her while she was crossing the road at Ghatkopar, Mumbai. The Appellant-Claimant had alleged that the accident was caused due to rash and negligent driving by the rider of the motorcycle. The said motorcycle was owned by the respondent No. 1 and insured by the Respondent No. 2 - Insurance Company. The appellant therefore filed a claim petition under Section 166

of the Motor Vehicles Act in Motor Accident Claims Tribunal, Mumbai, claiming total compensation of Rs.15,00,000/- with interest from the date of the petition till final payment.

4. The respondent No.1 denied that the accident was caused due to his negligent driving. He claimed that the accident was caused as the Appellant had run across the road without paying attention to the oncoming traffic. The Respondent No.1 also denied that the Appellant had sustained injuries resulting in permanent disablement.

5. The respondent No.2 Insurance company claimed that the rider of the motorcycle was not holding a valid and effective driving licence. The respondent No.2 - Insurance Company raised a defence that it is not liable to indemnify the insured for breach of terms and conditions of the policy.

6. The Claims Tribunal on appreciating the evidence held that the accident was caused due to rash and negligent driving by the rider of the motor cycle. While assessing the compensation, the Tribunal held that the appellant had failed to prove that she was earning Rs. 6000/- per month. The Tribunal therefore assessed the loss of income on the basis of notional

income of Rs.5000/- per month. Considering the fact that the Appellant had suffered permanent disablement to the extent of 45% and applying multiplier of 17, the Tribunal assessed loss of future income at Rs.4,59,000/-. The Tribunal also awarded compensation of Rs. 50,000/- towards loss of marriage prospects, Rs.1,26,178/- towards medical expenses, Rs.50,000/- for pain and suffering, Rs. 50,000/- towards loss of amenities of life and discomfort and Rs. 25,000/- for special diet and conveyance. Thus, the Tribunal awarded total compensation of Rs. 7,60,178/- with interest at the rate of 9 % from the date of petition till realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/original claimant has filed this appeal.

7. Learned counsel Mr. Devendranath Joshi, for the appellant submits that the appellant was working with a NGO on contract basis and that she was earning Rs.6000/- per month. He submits that the appellant had produced contract letter as well as certificate issued by the NGO and had also examined AW-2 Santosh Kasle the Chairman of Vijay Krida Mandal to prove the income of the Appellant. He therefore contends that the Tribunal was not justified in computing the compensation on the basis of notional income of Rs.5000/-. He submits that the appellant was 23 years of age and

the multiplier applicable was 18. The learned counsel for the appellant submits that the appellant had to resign from services in view of the injuries sustained by the Appellant in the accident resulting in 100% loss of earning. He therefore contends that the Tribunal has erred in equating the extent of loss of earning capacity to the percentage of permanent disability.

8. Ms. Deepika Prabhala, learned counsel for the respondent concedes that the multiplier applicable was 18. She submits that the appellant had failed to adduce tangible evidence to prove that her income was Rs.6000/- per month and the hence the Tribunal was justified in computing future loss of income on the basis of notional income. She further submits that there is absolutely no evidence to prove that the appellant is unfit to perform her duties or that she was compelled to quit the job due to her disablement.

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. It is not in dispute that the appellant-claimant had met with an accident on 30.12.2006 involving motorcylce bearing No. MH 01 WA 793. At the time of the accident she was 21 years of age. She had sustained injuries resulting in 45% permanent

disablement.

10. The appellant had deposed that at the relevant time she was appointed in Vijay Krida Mandal as a Counsellor at their project known as Aastha. Her appointment was on contractual basis and she was paid Rs. 6000/- per month. The appellant had produced copy of the contract letter as well as salary certificate at Exh. 35 and 36 respectively. The appellant had also examined CW-2 Santosh Kasle, the chairman of Vijay Krida Mandal. He has confirmed having issued the contract letter and certificates which are at Exh. 35 and 36 respectively. These documents viz-a-viz the evidence of CW2 corroborates the contention of the appellant that she was employed by the Vijay Krida Mandal and that she was earning Rs.6000/- per month. In the absence of challenge either to the credibility of evidence of CW-2 or to the genuineness of the documents at Exhs.35 and 36, in my considered view, the Tribunal was not justified in discarding the oral as well as documentary evidence, and further in computing loss of income on the basis of notional income of Rs.5000/- per month.

11. The medical evidence reveals that the appellant had suffered multiple fractures of M/3rd and L/3rd right femur and fracture of neck of femur

resulting in permanent disablement of 45%. The medical evidence further reveals that the appellant had undergone several surgeries. The last surgery undergone by her was on 18.4.2007. Considering the nature of injuries and the duration of treatment, it can be safely inferred that the appellant was unable to resume her duties atleast for a period of one year. The appellant would therefore be entitled for compensation of Rs.72,000/- towards actual loss of income during the period she was under treatment.

12. The nature of injuries suffered by the claimant and the extent of permanent disablement would certainly affect the earning capacity of the Appellant. Though it is urgent that there was 100% loss of earning, there is absolutely no evidence to prove that the appellant was unfit to perform her duties or that she was compelled to quit her job because of the permanent disablement and /or the injuries sustained in the accident. The Appellant having failed to prove that the permanent disablement had resulted in total loss of earning, the Tribunal was justified in assessing loss of future earnings on the basis of percentage of permanent disability to an extent of 45%. The Tribunal has applied the multiplier of 17 however, having regard to the age of the Appellant, the multiplier applicable is 18. Considering the income of the Appellant as Rs.6,000/- per month i.e. Rs.72,000/- per

annum, applying multiplier of 18 and keeping in view that the permanent disability was 45%, the compensation under the head of loss of future income works out to Rs.5,83,200/- as against compensation of Rs.4,59,000/- awarded by the Tribunal.

13. Thus, in addition to the compensation, awarded by the Tribunal, the Appellant is entitled for compensation of Rs.72,000/- towards actual loss of income and and additional amount of Rs.1,24,200/- towards future loss of income. The Appellant is therefore entitled for total compensation of Rs.8,84,378/- as against compensation of Rs.7,60,178/- awarded by the Tribunal. The impugned judgment and award needs to be modified to that extent.

14. Under the circumstances and in view of discussion, supra, the Appeal is partly allowed. It is held that the Appellant is entitled for total compensation of Rs.8,84,378/- with interest @ 9% per annum from the date of the petition till final realisation of the amount.

15. The respondent Nos.1 and 2 shall jointly and severally pay to the Appellant the balance amount of Rs. 1,24,200/- with interest at the rate of

9 % per annum from the date of the petition till the date of realization.

16. The impugned judgment and award be modified accordingly.

17. Civil application, if any, stands disposed of.

(ANUJA PRABHUDESSAI, J.)