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

INTERIM APPLICATION NO.1479/2021
IN
FIRST APPEAL (ST) NO.94605/2020

IFFCO TOKIO General Insurance Co. Ltd...... Applicant

Vs.

Smt. Sarita Kishin Aswani & Anr. ..... Respondents

Ms. Deepika Prabhala I/b. Res Juris for the Applicant
Mr. S. S. Vidyarthi for Respondent No.1.

CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.

DATED : JULY 12, 2021
(VIDEO CONFERENCING)

P.C.

1 Heard.

2 As the Applicant is challenging only the quantum awarded by the Tribunal, it is not necessary to serve Respondent No.2 – Driver and Owner of Auto Rickshaw, at present.

3 By this Interim Application, the Applicant Insurance Co. is challenging the judgment and award dated 21.12.2019 passed by the MACT, Mumbai in MACP No.215/2011 holding that the Respondent - Claimant is entitled to compensation of Rs.1,33,74,105/- (Rs. One Crore Thirty Three Lacs

Seventy Four Thousand One Hundred and Five only) inclusive of NFL along with interest @ 8% p.a. from the date of Application till realization.

4 In the present proceedings, in an accident which occurred on 26.03.2010, the Respondent had suffered multiple injuries. At the time of accident, she was of 54 years and serving in Bank of Baroda, Jogeshwari Branch, Mumbai and drawing salary of Rs.45000/- p.m. (Rs. Forty Five Thousand only). Because of the accident, the Respondent - claimant had made an Application under section 166 of the Motor Vehicles Act, 1988 before the MACT, Mumbai claiming compensation of Rs. 10,00,00,000/- (Rs. Ten Crores only) along with interest @ 15% pa.

5 The learned counsel for the Applicant submits that at the time of awarding compensation, the Tribunal has failed to consider the evidence on record. She submits that the Tribunal has granted compensation on higher side. She submits that they have good chance of success in the matter. In support of her contention, she relies on para 47 and 48 of the impugned award, which read thus:

> *"47. Insurer has also examined witness Priyanka who is also serving in Bank of Baroda regional office. She has also produced certain documents and as per her version applicant is getting pension of Rs 26,065/- per month and in the month of February she received pension of Rs 27,381/-. Therefore, it is submitted by learned counsel for insurer that when after giving resignation of her post applicant is getting pension, she is not entitled to get any compensation towards future loss of income. If the evidence of AW12 Supriya is perused in her evidence in para-9 she has stated*

that gross salary at the time of superannuation which was scheduled for 31.01.2016 had applicant not met with the accident, her gross salary would have been Rs 70,622/-. The applicant is claiming future loss @ Rs 50,832/- per month. Thus, from this evidence it is clear that had applicant being in service, she would have got Rs 70,622/- at the time of retirement and definitely she would have got more pension on the basis of last drawn salary. Considering the said fact, I am of the view that applicant is entitled to receive compensation towards future loss of income. When applicant is getting pension as she gave voluntary retirement of her post, the amount which she is receiving by her by way of pension has to be deducted from her monthly salary while calculating loss of future income.

48. Therefore, if Rs 27,000/- is deducted from Rs 50,832/- then her monthly loss of income comes to Rs 23,832/-. If it is held that income of the applicant is Rs. 23,832/- per month and permanent disability 100% then as observed in the above cited authority since claimant being salaried person addition of 15% of her income is required to be added as per ratio laid down in the case of Pranay Sethi (supra). If 15% is added in the monthly income of the applicant then her monthly income comes to Rs 27,406/-. If this figure is multiplied by 12, her annual income comes to Rs 3,28,872/-. Applicant was 57 years of age at the time of her voluntary retirement. Therefore, as per ratio laid down in the case of Sarla Verma (supra) multiplier of 9 is applicable in the instant case. If this figure of 3,28,872/- is multiplied by 9 then future loss of earning due to permanent disability received by her comes to Rs 29,59,848/-."

6 The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till hearing and final disposal of the First Appeal. She submits that if stay is not granted,

irreparable loss will be caused to them.

7 On the other hand, the learned counsel for the Respondent - claimant has vehemently opposed the Interim Application. He submits that there is no question of granting any stay in the matter. He submits that though the accident had occurred in 2010, the compensation Application was decided by the Tribunal in 2019. He submits that the Respondent - claimant has claimed compensation of Rs.10,00,00,000/- (Rs. Ten Crores only) with interest @ 18% p.a. under section 166 of the Motor Vehicles Act, 1988. He submits that the Tribunal, without considering the evidence on record, awarded only sum of Rs.1,33,76,105/- (Rs. One Crore Thirty Three Lacs Seventy Four Thousand One Hundred and Five only) along with interest @ 8% p.a. only. He submits that considering the expenses incurred by the Applicant for medical treatment i.e. more than Rs.31,00,000/- (Rs. Thirty One Lacs only), there is no question of granting any stay in the matter. The learned counsel for the Applicant submits that this Hon'ble Court be pleased to dismiss the application with costs.

8 Heard. It is to be noted that in the present proceedings because of accident, the original claimant was admitted in P.D.Hinduja Hospital between 04.10.2012 to 09.10.2012. Moreover, she was also operated. Because of accident, she has to follow up the treatment on several occasion. These facts are recorded by the Tribunal in para Nos.32 and 33 of the impugned judgment and award, which read thus:

"32. Applicant was admitted in P.D.Hinduja Hospital between 04.10.2012 to 09.10.2012, for post-traumatic hydrocephalus. A programmable right ventirculo-pertinoneal shunt was inserted by Dr. Milind Sankhe. The original discharge card is at Exh 143 colly. Dr Gursahani further deposed that on 15.10.2012 the patient was brought by her relatives to consult Dr. Milind Sankhe Neurologist for follow-up after discharge post insertion of ventriculo-peritoneal shunt. The stitches were removed and Dr. Sankhe examined the site. He asked the patients to follow up after one month. The said documents are on record Exh 146 colly. Thereafter, again on 12.11.2012 the patient's relatives brought her to meet Dr. Milind Sankhe Neurologist for one month follow-up post insertion of VP shunt. He asked them to meet him after a month with a CT scan to determine whether patient could be aggressive with the shunt setting. On 13.12.2012 again the patient's relatives brought her for follow-up and had a joint consultation with Dr Gursahani & Dr. Milind Sankhe. After observing the CT scan, Dr. Sankhe decided that they could be aggressive with the shunt setting. Dr Gursahani and Dr.Sankhe opined that they could consider further Botox therapy and/or Baclofen for reducing the spasticity of the limbs around Jan/Feb 2013 and again relatives were asked to follow up after 3 months. Relevant documents are produced at Exh.136 colly.

33. Thereafter, there was a follow-up treatment on 04/03/2013, 13/03/2013, 05/04/2013, 20/06/2013, 25/06/2013, 09/08/2013, 4/09/2013 and 02/12/2013, 12/02/2014, 7/10/2015, 28/04/2016, 01/06/2016, 31/08/2016 on these dates as per the advise of doctors, there was a joint consultation with Dr Gursahani and Dr Sankhe. On these various dates Dr Gursahani in his evidence has stated about condition of patient and treatment given to her. Patient has lastly brought to Dr Gursahani for consultation on 02/03/2017. Dr. Gursahani further stated that the patient has suffered relentlessly following her road accident not only in terms of the physical trauma and its sequelae but also in terms of repeated *hospitalisations, consultations, follow ups, complications and mental agony. Following the accident the patient remained in an unconscious state for several months. She had incontinency over her bladder and bowel and was even unable to eat on her own. She had to be fed artificially by PEG and she needed external assistance for defecation. The evacuation of urine had to be done using a Foley's catheter. According to Dr Gursahani all the hospitalisations referred to above including the one at Hindjua were all the direct and proximate cause of her accident dated 26.3.2010. Doctor further deposed that though gradually applicant regained consciousness, it took years for her to stop using catheter and PEG tube. Despite vigorous physiotherapy, neurorehab programming and administration of Botox injections from time to time she is nowhere near her previous mental and physical status. The spasticity in both her upper as well as lower limbs persists. She is unable to take care of herself. She needs more than one attendant to take care of her. She has developed frontal gait disorder. According to him, devastating injuries that damaged the patient's brain resulted in not only confining her to the bed and home and entailed frequent hospitalisations, consultations and rehabilitation programmes and treatment to prevent contractures and spasticity but it also gave rise to certain psychological disorders that mandated psychiatric treatment and evaluation. Dr. Gursahani stated that since the last about 4 years now the patient has been suffering from severe psychological disorders such as a morbid tendency to eat all the time or even an uncontrollable appetite for food, which is a condition known as hyperphagia. The patient has also been exhibiting extreme dis-inhibitory behaviour which is abnormal. This behaviour was regardless of who was present in the house or the room. She starts disrobing herself (removing her clothes) and expressed an extreme hypersexualised behaviour. There was no inhibition and this was done in the presence of whoever was present in the room at that time. All these traits in the patient clearly show that she is suffering from post-traumatic Kluver Bucy syndrome which is because of damage to the temporal* *lobe of her brain in the aforesaid trauma. This is a rare cerebral neurological disorder associated with the Temporal lobe of the brain resulting in abnormality in memory, social and sexual functioning and idiosyncratic behaviour. Dr. Gursahani further stated that he was therefore required to recommend her to be seen by Dr. V.K.Mundra who is a consulting psychiatrist at Hindjua Hospital who confirmed the diagnosis."*

9 Considering these facts, the Tribunal has awarded the compensation as under:

Future loss of earning	Rs.29,59,848/-
Hospitalisation charges	Rs.31,29,450/-
Consultation charges	Rs.1,64,214/-
Medical expenses	Rs.3,76,990/-
Purchase of medical equipments	Rs.4,36,133/-
Loss of pay	Rs.11,87,040/-
Ayabai and cook charges	Rs.5,61,950/-
Special diet	Rs.2,00,000/-
Conveyance	Rs.50,000/-
Ongoing medical expenses	Rs.3,98,480/-
Pain & sufferings	Rs.10,00,000/-
Loss of amenities of life	Rs.10,00,000/-
Future medical expenses & Conveyance	Rs.17,10,000/-
Gratuitous services	Rs.2,00,000/-
TOTAL	**RS.1,33,74,105/-**

10 Considering the injuries sustained by the claimant and the amount incurred by her for medical expenses, we are of the opinion that the original claimant can be permitted to withdraw some amount without furnishing any security and liberty can be granted to the claimant to make an

appropriate application for withdrawal of the remaining amount, which can be decided on its own merits.

11 Hence, the following order is passed:

a. The operation and implementation of the impugned judgment and award dated 21.12.2019 passed by the MACT, Mumbai in MACP No.215/2011 is stayed till the hearing and final disposal of the First Appeal, subject to the Applicant depositing the entire awarded amount along with interest in the Tribunal on or before 30.09.2021, failing which the application shall stand dismissed without further reference to the court.

b. If the entire amount is deposited within stipulated time as stated hereinabove, the Respondent-Claimant is permitted to withdraw 25% of the said amount without furnishing any security, subject to outcome of the present appeal.

c. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the claimant to make an appropriate Application for withdrawal of further amount, if she so desires, which will be decided on its own merits.

e. The Interim Application stands disposed of accordingly.

(PRITHVIRAJ K. CHAVAN, J.) **(K.K.TATED, J.)**