

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No.22 of 2009

Mrs. Rupali W/o Narendra Padole,
Aged about 30 years,
Occupation – Business,
R/o Central Park Road,
Opp. Tilak Vidyalaya, Dhantoli,
Nagpur.

... Appellant

Versus

1. Smt. Falvinder Kaur W/o Charanjit Singh,
Aged Major,
Occupation – Business,
R/o Tatibandh, Raipur (Chattisgarh).
2. Divisional Manager,
National Insurance Co. Ltd.,
Division No.2, Paul Commercial Complex,
Ajni, Nagpur.

... Respondents

Shri Akshay Naik, Advocate, with Shri Madhur Deo, Advocate,
for Appellant.
Shri M.A. Kadu, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 30th NOVEMBER, 2021

Oral Judgment :

1. Being dissatisfied with the quantum of compensation awarded by the learned Member, Motor Accident Claims Tribunal, Nagpur, by his judgment and award dated 21-7-2008 passed in Claim Petition No.340 of 2002, the original claimant is before this Court in this appeal.

For the sake of brevity, the appellant herein will be referred to as **the claimant**.

2. The facts giving rise to the present appeal can succinctly be disclosed as under :

(a) On 31-5-2001, the claimant was travelling in a jeep, having registration No.MZV-8307 from Pimpalgaon to Nagpur. The jeep was owned by the husband of the claimant and he himself was driving the same at the time of occurrence of the accident. When the jeep reached near the bridge of Borgaon, from the opposite direction, a truck, having registration No.MP 23/B-2267, gave a dash to the jeep, resulting in the claimant suffering various injuries.

(b) After the accident, the claimant was immediately taken to the hospital of Dr. Pradeep Kukdey at Bhandara, where she was treated by him till 2-6-2001. However, looking to and considering the nature of the injuries suffered, it was advised that the claimant should be shifted to Nagpur and accordingly, the claimant was shifted to the hospital of Orthopaedic Surgeon Dr. Anil Golhar at Nagpur. She was admitted as an indoor patient at Dr. Anil Golhar's hospital from 2-6-2001 to 2-7-2001. During this period, the operations were performed on the right

hip and leg of the claimant. She was also advised to consult Dr.Mrs. Sadhana Thote for her physiotherapy. In spite of the operations, her pain continued and, therefore, Dr. Anil Golhar advised the claimant for removal of her bipolar hip. Accordingly, the said operation was conducted in the hospital of Dr. H.J. Sangtani at Nagpur.

(c) An offence was registered vide CR No.132 of 2001 against the driver of the offending vehicle.

(d) The claimant filed a petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs.8,00,000/-.

(e) The claim petition was contested by respondent No.2- National Insurance Co. Ltd., Nagpur (for the sake or brevity, respondent No.2 will be hereinafter referred to as **the Insurance Company**).

(f) In view of the rival pleadings, the issues were framed by the Tribunal.

(g) To prove her claim, the claimant examined in all six witnesses, including herself; and they are claimant, as PW 1;

Narendra Padole, husband of the claimant, as PW 2; Girish Bhattad as PW 3, who proved the medical bills; Dr. Anil Golhar as PW 4; Amrut Rokde, as PW 5, from whom the claimant used to purchase the sarees and to sell the same from her house; and Dr. Hargun Sangtani, as PW 6, who replaced the bipolar hip and proved his case. No witness was examined by the Insurance Company.

(h) The Tribunal has partly allowed the claim petition and granted the compensation of Rs.4,75,000/- together with interest at the rate of 7.5% per annum from the date of the petition till the satisfaction of the award.

3. Heard Shri Akshay Naik, learned counsel, with Advocate Shri Madhur Deo, for the appellant- claimant; and Shri M.A. Kadu, learned counsel for respondent No.2- Insurance Company. Nobody has put in appearance for respondent No.1, the owner of the offending truck, though in the year 2009-10 itself, the said respondent was duly served.

4. According to the learned counsel for the appellant- claimant, the compensation granted in favour of the claimant is on a lower side. He submitted that the Tribunal has committed an error in fixing the amount of compensation at the rate of Rs.96,000/- towards loss of

future earning, which cannot stand to the scrutiny of law in view of the judgment of the Hon'ble Apex Court in the case of *Sanjay Kumar v. Ashok Kumar and another*, reported in (2014) 5 SCC 330. He also submitted that the Tribunal has granted less compensation for pain and suffering and also for enjoyment. He has, therefore, prayed that the present appeal be allowed.

5. *Per contra*, the learned counsel for the Insurance Company supported the reasoning given by the Tribunal.

6. It is clear from the judgment and award, impugned in this appeal, that the husband of the claimant was not at all responsible for the accident. The accident occurred solely due to rash and negligent driving of the driver of the offending vehicle. The finding recorded by the Tribunal that in the accident, the claimant suffered various injuries, is also not challenged by the Insurance Company either by filing separate appeal or by filing cross-appeal in this appeal filed by the claimant. After hearing both the learned counsel for the parties, the only point that falls for my determination in this appeal is as under :

Whether an interference is necessary with the impugned judgment and award?

7. From perusal of the judgment and award, the learned Member of the Tribunal has granted Rs.2,50,000/- towards the bills for medicines. Similarly, Rs.10,000/- are granted for incidental expenses, attendant's charges, etc. In addition to that, Rs.15,000/- are granted towards conveyance charges. Similarly, Rs.10,000/- are granted to the claimant for compounder's visit at the house of the claimant daily for two months. Therefore, the amount of conveyance is granted to that extent. Similarly, Rs.5,000/- are granted for special diet. For loss of earning during the period of treatment, the Tribunal has granted Rs.14,000/-. The Tribunal has granted Rs.96,000/- for loss of future earning for the claimant. Similarly, for pain and suffering, the Tribunal has granted Rs.40,000/-. For loss of amenities, Rs.10,000/- are granted, and for loss of enjoyment, Rs.25,000/- was granted. Thus, the total compensation of Rs.4,75,000/- is granted to the claimant.

8. It would be useful to record the statement of the learned counsel for the claimant that the claimant is not claiming more amount than Rs.14,000/- for loss of earning during the period of treatment.

9. The learned counsel for the claimant seriously disputed about the quantum of loss of future earning as granted by the Tribunal. It is his submission that the amount of Rs.96,000/- granted for loss of future earning is meagre one.

10. It is not in dispute that the claimant was doing the business of selling sarees from her house only. She has examined Shri Amrut Rokde, from whom she used to purchase sarees. Further, the Tribunal has found that the monthly income of the claimant must not be less than Rs.2,000/-. Though the learned counsel for the claimant tried to point out that the monthly income of the claimant was more than that of Rs.2,000/-, in my view, the finding recorded by the Tribunal that the monthly income of the claimant was Rs.2,000/- cannot be disturbed in view of the available material evidence on record.

11. Exhibit 38 is a handicap certificate, issued by the Handicap Board, consisting of three doctors, and the Chairman of the said Board is the Civil Surgeon. Exhibit 38, which is dated 14-1-2004, shows that the claimant suffered 25% permanent disability. At the first place, the learned counsel for the claimant tried to press into service Exhibit 45, the disability certificate given by Dr. Anil Golhar. The said certificate is dated 3-4-2002. However, during the cross-examination, Dr. Anil Golhar frankly admitted that at the time of recording of his evidence, it would not be possible for him to give percentage of disability at that time. Looking to the disability certificate given by the Handicap Board in the year 2004, i.e. two-and-half years after the accident, in my view, the Tribunal has rightly exhibited Exhibit 38 to record a finding on the basis of the said document that the claimant

shall have the permanent disability of 25%. Accordingly, the finding is given in that behalf.

12. The learned counsel for the claimant is not disputing the application of multiplier of 16, which was applied by the Tribunal. Thus, we have the monthly income as Rs.2,000/-, we have the disability of 25%, and we have the multiplier of 16. In that view of the matter, looking to the observations of the Hon'ble Apex Court in Paragraph No.11 in its judgment in the case of *Sanjay Kumar*, cited supra, which are reproduced as under, the calculations can be made as follows :

"11. "Loss of future prospects" should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment in income. As per the case of Sarla Verma v. DTC, keeping in mind the young age of the appellant, he is entitled to 50% of his income as future increase in income (Rs.4500 + 2250 = Rs.6750). We will apply a multiplier of 18 as taken by the High Court in the impugned judgment and as per Sarla Verma case. The appellant's permanent disability and loss of earning capacity was assessed at 70% and we will not interfere with that. Hence, the total amount of compensation due to loss of earning capacity along with future prospects in income will come to Rs.10,20,600 (Rs.6750 x 70/100 x 12 x 18)."

Rs.2,000/- per month + Rs.800/- (i.e. 40% of future prospect) (This amount is not at all granted by the Tribunal) = Rs.2,800 x 25 = amount of disability
 Rs.70,000/- / 100 = Rs. 700 x 12 months = Rs.8,400/- per annum x multiplier of 16 = **Rs.1,34,400/-**.

Thus, the learned counsel for the claimant is right in submitting that the amount of Rs.96,000/-, as granted by the Tribunal under the head of future earning, is on a meagre side, is to be accepted and the claimant will be entitled for Rs.1,34,400/- instead of Rs.96,000/- under the head of loss of future earning.

13. From the evidence adduced by the claimant, which is not at all seriously challenged by the Insurance Company, it is clear that the claimant was indoor patient for the following duration on three occasions :

(1) From 31-5-2001 to 2-6-2001 at the hospital of Dr. Pradeep Kukdey at Bhandara.

(2) From 2-6-2001 to 2-7-2001 at the hospital of Dr. Anil Golhar at Nagpur.

(3) From 6-12-2002 to 20-12-2002 at the hospital of Dr. H.J. Sangtani at Nagpur.

In addition to that, the claimant was required to take physiotherapy thereafter also. In that view of the matter, according to

the learned counsel for the claimant, the amount of Rs.40,000/- granted by the Tribunal for pain and suffering is on a lesser side and in my view adequate compensation would be Rs.60,000/-. Similarly, for loss of enjoyment, the meagre amount of Rs.25,000/- was granted in favour of the claimant looking to the nature of the injuries, which the claimant suffered, and looking to the replacement of hip, obviously she will not be able to enjoy the life fully. Therefore, in my opinion, instead of Rs.25,000/-, the ends of justice will be met if Rs.50,000/- are granted in favour of the claimant. Thus, according to me, the claimant will be entitled to Rs.1,34,400/- instead of Rs.96,000/- and will also be entitled to Rs.60,000/- instead of Rs.40,000/- and Rs.50,000/- instead of Rs.25,000/-. Thus, in my view, the claimant will be entitled to Rs.83,400/- after deducting the amount granted under those heads, in addition to Rs.4,75,000/- as granted by the Tribunal. Resultantly, I pass the following order :

(1) The appeal is partly allowed.

(2) The judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Nagpur, on 21-7-2008 in Claim Petition No.340 of 2002, is hereby set aside to the extent it is prejudicial to the interest of the appellant.

(3) In addition to the amount of Rs.4,75,000/-, which is already granted by the Tribunal, the appellant-claimant will be entitled to claim interest at the rate of 7.5% per annum, as granted by the Tribunal, from the date of the petition, i.e. 20-4-2002, till the satisfaction of the award.

(4) Respondent No.2- Insurance Company is directed to deposit the enhanced amount with interest in this Court within a period of three months from today and on that deposit, the appellant-claimant will be entitled to withdraw the same.

(5) The decree be drawn accordingly.

14. The appeal stands disposed of in above terms. No costs.

JUDGE.

Lanjewar