

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 50 OF 2007

Ku. Seema D/o Laxman Waghmare
Age: 14 yrs. Occu: Education,
U/G of real father Laxman s/o Sambhaji Waghmare
R/o Nanda, Tq. Bhokar, Dist. Nanded ... **Appellant**
[Ori. Claimant]

Versus

1. M. Jalpathrao
Age: Major, Occ: Business,
R/o H.N.11-24-10, Shatavahanaputra,
Desai Peth Road, Warangal,
Andhra Pradesh (A.P.)
2. The Oriental Insurance Co. Ltd.,
The Divisional Office, Post Box No.18,
Girmalpeta, Warangal,
Andhra Pradesh (A.P.)
3. The Oriental Insurance Co. Ltd.
Through its Branch Office, at Nanded ... Respondents

WITH

FIRST APPEAL NO. 101 OF 2007

Rajabai W/o Laxman Waghmare
Age: 35 yrs. Occu: Labour,
R/o. Nanda, Tq. Bhokar Dist. Nanded ... **Appellant**
[Ori. Claimant]

Versus

1. M. Jalpathrao
Age: Major, Occ: Business,
R/o H.N.11-24-10, Shatavahanaputra,
Desai Peth Road, Warangal,
Andhra Pradesh (A.P.)

2. The Oriental Insurance Co. Ltd.,
The Divisional Office, Post Box No.18,
Girmalpeta, Warangal,
Andhra Pradesh (A.P.)

3. The Oriental Insurance Co. Ltd.
Through its Branch Office,
at Nanded

... Respondents

....

Mr. S. G. Nandedkar, Advocate for appellants

Mr. M. K. Goyanka, Advocate for respondent Nos. 2 and 3

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 29th NOVEMBER, 2021

PRONOUNCED ON : 01st FEBRUARY, 2022

J U D G M E N T :-

. Both these appeals are being decided by this common judgment, since they are arising from judgments and awards passed in Motor Accident Claim Petitions (Petitions) arising from one and the same accident.

2. First Appeal No. 50 of 2007 has been preferred for enhancement of compensation granted by the Tribunal in M.A.C.P No.493 of 2000, granting compensation of Rs.40,000/- (Rupees Fourty Thousand) with interest at the rate 6% per annum, while the

First Appeal No. 101 of 2007 has been preferred against the judgment and award, dismissing the M.A.C.P No.387 of 2000. Both the petitions were filed for compensation on account of injuries and disability suffered in vehicular accident.

3. The facts giving rise to the present appeals are as under:

One Laxman Waghmare, along with his wife – Rajabai and three minor children (Ravi, Seema and Avinash), had boarded a truck bearing registration No.AEO-2555 for village Nanda from Bhokar on 02.05.2000. It is the case of the appellants herein that they were carrying one quintal Jawar and one quintal Wheat. The truck driver charged them Rs.75/- towards fare for carrying them along with their goods. The truck met with the accident on the way. As a result thereof, minor son Ravi died. Seema and Rajabai suffered multiple injuries. Seema, through her father Laxman, the next friend of Seema, and Rajabai, preferred two separate claim petitions for compensation.

The Tribunal dismissed the claim petition of Rajabai. Seema was granted compensation of Rs.40,000/-.

4. The Tribunal held the respondent – Insurance Company to have no liability to pay any compensation, since the truck was a goods carriage. The claimants were travelling therein as unauthorised passengers. The policy of insurance did not cover risk of such persons. It, however, directed the Insurance Company to satisfy the award passed in M.A.C.P No.493 of 2000 and then recover the amount from the truck owner. It appears that the respondent – Insurance Company has accepted the award, since it has neither preferred any appeal nor filed cross objection.

5. Heard.

Learned Advocate for the appellants would submit that there is on record injury certificates and disability certificates as well. The appellant Seema was indoor patient for more than four days. A very meager compensation has been awarded to her. According to the learned Advocate, Rajabai ought to have been granted some compensation, since she too suffered injuries.

6. Learned Advocate for the respondent – Insurance Company would, on the other hand, urged for dismissal of the

appeals. He reiterated the reasons given by the Tribunal in support of the impugned awards.

7. Considered the submissions advanced. Perused the pleadings and evidence as well. So far as regards claim of appellant Seema is concerned, her injury certificate (Exh.35) indicates she suffered following injuries.

- | | | | |
|-------|---------------------------------|---|--------------|
| (i) | Abrasion
(at left forearm) | - | 10 x 2 cm |
| (ii) | Abrasion
(at right elbow) | - | 4 x 4 cm |
| (iii) | CLW
(on right index) | - | 1 x ½ x ¼ cm |
| (iv) | Abrasion
(on right shoulder) | - | 1 x ½ cm |
| (v) | Contusion
(above left ear) | - | 5 x 5 cm |

Her discharge card has also been placed on record. It suggests that she took treatment in surgery and burn ward. Exh-38 indicates her to have suffered 21% of disability of following nature:-

“10% burn with CLW (R) index finger with contusion left temporal region of head with abrasion (L) forearm with Abrasion (L) elbow joint (21% Twenty One Percent).”

8. Considering the nature of injuries suffered by the appellant Seema, this Court finds grant of Rs.40,000/- (inclusive of NFL), to be inadequate. This Court, therefore, proposes to enhance the same by Rs.25,000/-, to be paid on account of pain and sufferings, attendance special diet, etc.

While in case of claim of Rajabai is concerned, the Tribunal has observed thus:

“The injury certificate speaks that she has sustained solitary injury i.e. abrasion over left knee joint having size 3 x 3 cm. There is no evidence that, the petitioner has sustained any grievous injury. There is no medical evidence that petitioner has sustained permanent disability. The form comp-B show 6% disability but does not speak if disability is permanent in nature. There is no evidence that, physical efficiency or capacity has been reduced or otherwise. I, thereby do not agree that the petitioner must have lost the medical bills because of such solitary injury. The injury sustained by the petitioner is not permanent disability. The petitioner has sustained only abrasion of 3 x 3 cm. For which, I think the petitioner is not entitled for any compensation.”

9. The aforesaid reasoning given by the Tribunal for dismissal of the claim petition is unreasonable. The Tribunal itself came to the conclusion that the appellant Rajabai had suffered abrasion over her left knee joint. The same suggests her to have pain, suffering and discomfort as well. On that count, the Tribunal ought to have granted a sum of Rs.10,000/-.

10. With this, both the appeals partly succeed in terms of following order:

ORDER

- (i) Both the appeals are partly allowed.
- (ii) The amount of compensation granted by the Motor Accident Claims Tribunal, Nanded, vide judgment and order dated 02.09.2006, in M.A.C.P No.493 of 2000, is enhanced from Rs.40,000/- to Rs.65,000/-. Rest of the terms of the impugned award to stand unaltered.
- (iii) The judgment and order dated 02.09.2006, passed by the Motor Accident Claims Tribunal, Nanded, dismissing the claim petition i.e. M.A.C.P No.387 of 2000, is hereby set aside. The said petition is partly allowed, granting the claimant – Rajabai, compensation of Rs.10,000/-, to be paid by the respondent No.1 – truck owner with interest at the rate 6% per annum from the date of petition to the date of actual payment.
- (iv) The claim petition is dismissed against the respondent – Insurance Company. The Insurance Company is however directed to first satisfy the award and recover the amount from the owner of the truck in execution proceedings.

[R. G. AVACHAT, J.]