

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

FIRST APPEAL NO. 1123 OF 2013

Sau. Sakhubai Kiran Koli

Age: 28 years, Occupation – Nil

R/o Patondi (New), Tal. Raver, Dist. Jalgaon

... **Appellant**
(Ori. Claimant)

Versus

1. Shri Shaikh Salim Shaikh Vahab

Age: 36 years, Occupation – Business,

R/o Haji Mohalla, Faizpur,

Tal. Yawal, Dist. Jalgaon

2. The United India Insurance Company Ltd.

Mansingh Market, 2nd Floor,

Navi Peth, Jalgaon

Respondents
(Ori. Opponents)

....

Mr. M. M. Bhokariker, Advocate for appellant

Mr. S. S. Rathi, Advocate for respondent No.2

....

CORAM : Y. G. KHOBRADE, J.

DATED : 17th NOVEMBER, 2022

J U D G M E N T :-

Since the appellant claimed for enhancement of compensation and the respondent No.2 – Insurance Company accepted the award, with consent of the appellant and respondent No.2, the matter is heard finally at the stage of admission without issuing notice to respondent No.1 – owner of the offending vehicle.

2. Being dissatisfaction of judgment and award dated 25.04.2012, passed by the learned Member, Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No.521 of 2009, the appellant – original claimant invoked jurisdiction of this Court under Section 173 of the Motor Vehicles Act and prayed for enhancement of compensation.

3. In nutshell, facts rise to the present appeal are that, on 28.12.2006 at about 1.15 p.m., the appellant – original claimant was travelling in Ape-rickshaw bearing No. MH-19-V-2887 from Raver to Savda and when said rickshaw reached in the area of village Vivare (Kh.), at that time, one motorcycle bearing No.MP-12-E-3394 came from opposite direction and there was collision between the motorcycle and Ape-rickshaw, due to which the appellant received serious fracture injuries to her right leg, right shoulder etc. After the said accident, the appellant was admitted in Rural Hospital, Savda, but subsequently she was shifted to Civil Hospital, Jalgaon, where her mid foot was amputated. The necessary implants were inserted in her right leg. According to the appellant, she received 60% disability and at the relevant time she was aged about 28 years and was doing agriculture labour work. According to the appellant, she was earning

Rs.3,000/- per month by doing labour work. Due to the disability, she is unable to do any work. The appellant contended that said accident occurred due to rash and negligent driving of Ape-rickshaw driver and the rider of motorcycle. Therefore, considering the nature of permanent injuries, future prospects, pains and sufferings, she is entitled to receive compensation of Rs.8,00,000/- from the respondents who are the owner of Ape-rickshaw and its insurer.

4. Respondent No.1 – owner of Ape-rickshaw, filed written statement at Exh.15 and resisted the claim of the appellant-petitioner on the ground that said accident has occurred due to rash and negligent riding of motorcycle. Respondent No.1 denied the age, occupation and income of the appellant. However, in alternative, the respondent No.1 claimed that his autorickshaw is duly insured with respondent No.2. Therefore, said compensation, if any determined, can be recovered from respondent No.2.

5. Respondent No.2 – Insurance Company of Ape-rickshaw, resisted the claim of the appellant by filing written statement and submitted that said accident was occurred due to rash and negligent riding of motorcycle and owner of the motorcycle and its insurer have

not made party, therefore, said application is not maintainable. Respondent No.2 further submitted that the claimant has claimed excessive and exorbitant compensation, hence, prayed for dismissal of the claim.

6. On the basis of trivial pleadings of both the sides, the learned Member framed issues at Exh.27 and after appreciating the evidence led by the parties, the learned Member recorded findings that an accident occurred due to composite negligence on the part of the Ape-rickshaw driver and the motorcycle rider. However, the learned Member pleased to direct respondent Nos. 1 and 2 to pay jointly and severally compensation of Rs. 2,30,000/- including no fault liability to the appellant-petitioner with interest 7.5% per annum from the date of application till the realization of entire amount.

7. Being aggrieved by the said order, the appellant has filed present appeal under Section 173 of the Motor Vehicles Act and prayed for enhancement of compensation.

8. Mr. Bhokarika, the learned counsel appearing for the appellant submitted that the learned Member failed to consider that the appellant filed a petition under Section 163-A of the Motor

Vehicles Act, 1988, which did not require to plead negligence as it is a special provision and it is only after the conversion of the petition into Section 166 of the Act. The petitioner was bound to be the knowledge of the accident and shown facts and circumstance in which the accident occurred and the appellant pleaded about occurrences of accident when she was travelling in Ape-rickshaw and the motorcycle came from opposite direction and there was collision between the two vehicles, which resulted into serious fracture to right leg, right shoulder of the appellant. The appellant stated in her evidence that at the relevant time she was 28 years old and the respondent have not brought any substantial evidence to disprove the age of the appellant, however, the learned Member erroneously determined the age of the appellant as 36 years and wrongly applied multiplier as 15 and ascertained gross inadequate compensation of Rs.2,30,000/-. Therefore, the impugned award passed by the learned Member is liable to be quashed and set aside to the extent of quantum of compensation.

9. Section 163-A (1) of the Motor Vehicles Act, 1988, reads as under:

“(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).”

10. The learned counsel appearing for the appellant further canvassed that due to accident, the appellant has lost earning capacity and she is unable to do agricultural labour work as well as household work. Therefore, though the appellant has not produced evidence about her income, but considering the notional income in the year 2006-2007, the learned Tribunal could have been considered notional income of Rs.3,000/- per month and as such, the claimant was 28 years old. Therefore, the learned Member would have applied multiplier 18 and loss of future prospects 50%, which comes as under:

Rs.3000/- X 12 = Rs. 36,000/- Rs.36,000/- X 18 =
Rs.6,48,000/- plus Rs. 3,24,000/- (50% future loss) = Rs.9,72,000/-
excluding the medical expenses. However, the learned Member

wrongly considered the age of the appellant 36 years and wrongly applied multiplier of 15 and wrongly ascertained 40% disability and wrongly awarded compensation of Rs.1,80,000/- plus Rs.15,000/- towards pains and sufferings plus Rs.5,000/- towards attendance plus Rs.5,000/- towards conveyance plus Rs.20,000/- towards loss of amenities of life. Total comes to Rs.2,30,000/- only, which is inadequate.

11. In support of this submission, the learned counsel appearing for the appellant placed reliance on the following case laws.

- (i) *Abhimanyu Pratap Singh vs. Namita Sekhon and Anr. - AIR Online 2022 SC 938;*
- (ii) *Savitha Vs. M/s. Chodamandalam M. S. General Insurance Co. Ltd. and Ors. - AIR Online 2020 SC 591;*
- (iii) *Kajal Vs Jagdish Chand and Ors. - AIR 2020 SC 776;*
- (iv) *Jagdish Vs. Mohan and Ors. - AIR 2018 SC 1347;*
- (v) *Ramchand Sobharajmal Kishanani Vs. Ghanshyam Jumdomal Ranglani and Anr. - AIR Online 2022 Bom. 1981.*

12. The learned counsel appearing for respondent No.2 submitted that the injury certificate Exh.22 issued by the Medical Officer, Civil Hospital Jalgaon, proves that the claimant suffered 40%

disability as per Schedule-I part-II to the Employees Compensation Act, 1923 and considering the notional income of Rs.3,000/- per month, the learned Member applied multiplier of 15, because, though the appellant stated in her evidence that she is aged about 28 years, however, in cross examination, she admitted that, she is having earning two sons. Therefore, considering the age of earning two sons of the appellant, the learned Member considered the age of the claimant as 36 years and computed the compensation of Rs.4,50,000/- for 100% permanent disability, but the appellant received 40% permanent disability, therefore, amount of Rs.1,80,000/- for permanent disability computed and in addition to that additional amount of Rs.50,000/- awarded under other heads i.e. pains and sufferings, diet, attendance, conveyance, loss of amenities, etc. Therefore, the award passed by the learned Member is just and proper. Hence, prayed for dismissal of the appeal.

13. On concise hearing, it *prima-facie* appears that the appellant/injured filed application under Section 163-A of the Motor Vehicles Act, 1988 and claimed compensation of Rs.8,00,000/- on account of permanent disability suffered by her due to vehicular accident occurred on 28.12.2006, when she was travelling in Ape-

rickshaw No.MH-19-V-2887 and the motorcycle No.MP-12-E-3394, which are colluded. The evidence led by the claimant, she sustained serious fracture injuries to her right leg, right shoulder and she was initially hospitalised in Rural Hospital, Savda, but subsequently she was shifted to Civil Hospital, Jalgaon, where her mid foot was amputated and necessary implants inserted in the right leg. The claimant claimed that she received 60% permanent disability and at the relevant time she was about 28 years and was doing labour work, she was drawing wages of Rs.3,000/- per month. The learned Member considered injury certificate Exh.22, disability certificate Exh.26, wherein, the Civil Surgeon, Orthopedic Surgeon and Residence Medical Officer certified that the claimant sustained permanent 60% disability. No doubt, as per Schedule-I Part-II of the Employees Compensation Act, amputation of limb below knee middle thing to 8.89 cms provides 60% permanent disability. Though the appellant has not examined, the Medical Officer to prove 60% permanent disability, but the respondents have not disputed above permanent disability caused to the appellant. Hence, as per injury certificate Exh.22 shows crush injuries to the right knee and right Ankle, swelling to right thigh, fracture to right shaft femur with

condular fracture, which as per the disability certificate Exh.26 issued by the Medical Board, the appellant sustained 60% permanent disability. However, the petitioner has not stated that due to sustaining such disablement, she is unable to move or unable to discharge her daily routine work. Therefore, considering Schedule-I Part-II of the Employees Compensation Act, disability certificate Exh.26 and to meet ends of justice, it would be just and proper to ascertain 50% permanent disability of the appellant and as such, considering the income of the appellant at Rs.3,000/- per month and by applying multiplier 16, following compensation can be ascertained.

14. Income of Rs.3,000/- per month X 12 = Rs.36,000/-, divided 50% disablement = Rs.18,000/-. Multiplying 16, i.e. Rs.18,000/- X 16 = Rs.2,88,000/- plus Rs. 50,000/- under the head of pains and sufferings, diet, attendance, conveyance, loss of amenities, therefore total comes to Rs.3,38,000/-. The learned Member ascertained compensation of Rs.2,30,000/-. Therefore, the appellant is entitled to receive enhanced compensation after deducting the compensation ascertained by the learned Member.

15. In view of above, I proceed to pass the following order:

ORDER

- (i) The First Appeal is partly allowed.
- (ii) The judgment and award dated 25.04.2012 passed in M.A.C.P No.521 of 2009 by the learned Member, Motor Accident Claims Tribunal, Jalgaon, is hereby modified and the respondent No.2 is hereby directed to indemnify additional compensation of Rs.1,08,000/- along with simple interest @ 9% per annum from the date of filing of present appeal i.e. 29.11.2012, till its realization.

[Y. G. KHOBRAGADE, J.]

SMS