IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 240 OF 2003

Sakhubai w/o Jagannath Deshmukh,
age: 31 years, Occ: Business & H. H.,
R/o Borgaon (Kd), Taluka Pallam,
District Parbhani. Appellant

Versus

01 Raghunath s/o Venkati Nagargoje,
age: major, Occ: As driver (S.T.),
R/o C/o S. T. Depot Manager,
Udgir.

02 The Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur.

03 Uttam s/o Sopan Mone

04 Suryakant s/o Bhimrao Patil,
age: major, Occ: Business,
R/o Patil Galli, Ahmedpur.

05 The Manager,
New India Assurance Company
Ltd., Chandranagar, Latur. Respondents

Ms. Shivani Patil, advocate holding for Mr. N. B. Patil, advocate for the appellant.
Respondent No.1 deleted.
Mrs. R. D. Reddy, advocate for Respondent No.2.
Appeal stands dismissed as against Respondent No.3 vide Registrar's order dated 07.12.2021.
Respondent No.4 served.
Mr. V. N. Upadhye, advocate for Respondent No.5.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 07th January, 2023.
Pronounced on : 09th January, 2023.

JUDGMENT :

1 The appellant i.e. original claimant has preferred this appeal challenging the judgment and award dated 24.07.2002, passed by the learned *Ex-Officio* Member of Motor Accident Claims Tribunal, Latur in M. A. C. P. No. 05 of 2000, only on the ground of quantum.

2 The learned Tribunal has granted compensation of Rs. 64,000/- along with interest @ 9% p.a. from the date of petition till its realisation to the present appellant from Respondents No. 2 to 5 under joint and several liability. Respondent No.2 – MSRTC and Respondent No.5 – Insurance Company have already deposited the amount of compensation by contributing it in equal proportion, as directed by the learned Tribunal.

3 Heard rival submissions and perused the impugned judgment and award along with original record and proceedings of M. A. C. P. No. 05 of 2000.

4 Learned Counsel for the appellant vehemently argued that the Tribunal did not appreciate the evidence on record and has granted meager amount of compensation by ignoring the fact that the appellant has in fact suffered from permanent disability to the extent of 40%. She further submits that the learned Tribunal also reduced her income from Rs.100/- per day to Rs.70/- per day without any justification and wrongly calculated the amount of compensation by applying one-third deduction method, which is not advisable in the personal injury claims.

5 On the contrary, learned Counsel for Respondent No.2-MSRTC as well as learned Counsel for Respondent No.5-Insurance Company strongly opposed the submissions made on behalf of the appellant. They submitted that the learned Tribunal has rightly assessed the amount of compensation

since the appellant did not produce any documentary evidence in respect of her medical expenditure. Moreover, the doctor, who had issued the disability certificate, was also not examined and, therefore, the contention of the appellant, that she lost vision of her left eye, could not be proved. As such, they prayed for dismissal of the appeal.

6 It is significant to note that the learned Tribunal presumed daily income of the appellant to the extent of Rs.70/- and calculated her dependency at Rs.16,800/- and thereafter by applying multiplier of “5” awarded compensation of Rs.64,000/-. However, in the subsequent judgment of the Hon’ble Apex Court in the case of **Raj Kumar Vs. Ajay Kumar** and another, reported in (2011) 1 SCC 343, a specific method for calculating the amount of compensation, specially in personal injury claims, has been given. As such, since the aforesaid judgment is applicable for pending cases and appeals, I have to calculate the compensation as per the same.

7 Admittedly, the appellant did not examine any witness from the medical field to substantiate her claim that she suffered permanent disability to the extent of 40%. It appears that the learned Tribunal has only relied on the disability certificate issued by one Dr. Kukade, wherein such percentage of permanent disability is shown. Since the appellant has not examined Dr. Kukade, it is highly difficult to believe that she suffered 40% permanent disability. Further, it also cannot be determined for want of medical evidence that whether the percentage of said disability was to the extent of full body or functional disability of the appellant. While determining the correct compensation and assessing future loss of income, functional disability is also to be taken into consideration. However, considering the observations of the learned Tribunal that the appellant lost vision of her left eye, it can safely be inferred that she must have suffered from 15% functional disability on permanent basis.

8 Further, in the absence of any documentary evidence, her notional income can be taken to be Rs.3000/-

per month. Since it has been observed earlier that she suffered from 15% functional disability on permanent basis, her loss of income per month comes to Rs.450/-. Further, considering her age as 30 years, a multiplier of "17" is applicable as per the table given in the judgment of Hon'ble Apex Court in the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another,** AIR 2009 6 SCC 3104. Thus, when such multiplier is applied to the annual income of the appellant, the future loss of income it comes to Rs.91,800/- (450 x 12 x 17). Further, in the absence of any documentary evidence regarding her medical expenditure, an amount of Rs.10,000/- can be additionally awarded to her on the ground of pain and suffering. As such, to my mind, the appellant is entitled for total compensation of Rs.1,01,800/-. Respondents No.2 and 5 have already satisfied the award of learned Tribunal by depositing amount of Rs.64,000/- along with interest by contributing 50% by each of them. Therefore, the appellant is now entitled for enhanced compensation of Rs.37,800/-. Since, I am deciding this appeal in the year 2023, prevailing rate of interest @ 6% p.a. will be applicable over the aforesaid enhanced amount of compensation from the date of Claim Petition till its realisation.

9 In the result, following order is passed:

(a) Appeal is hereby partly allowed.

(b) Respondent No.2-MSRTC and Respondent No.5-Insurance Company are directed to pay enhanced compensation amount of Rs.37,800/- to the appellant along with interest @ 6% p.a. from the date of petition till its realisation by contributing the same in equal proportion.

(c) Respondents No.2 and 5 shall pay the aforesaid amount of enhanced compensation to the appellant within three months from the date of this order.

(d) The award be modified accordingly.

(e) No order as to costs.

(SANDIPKUMAR C. MORE)
JUDGE

adb