IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1480 OF 2004

Rukhminibai w/o Dhondiba Shingare
Age : 49 years, occ : household
R/o Bahadurpura, Taluka Kandhar,
District Nanded. Appellant

Versus

1. Vivek Keshavrao Vyawhare
   Age : 30 years, occ : household
   R/o Main Road, Near Naka,
   Akhala Balapur, Tal. Kalamnuri,
   District Hingoli.

2. The Oriental Insurance Co. Ltd.,
   Through it's Branch Manager,
   Branch at Santi Krupa Market,
   1st Floor, Guru Gobinsingh Road,
   Nanded.

3. Ganesh Dhondiba Shingare
   Age : 40 years, occ : business
   R/o Bahadurpura, Taluka Kandhar,
   District Nanded.

4. United India Insurance Co.Ltd.
   Tghrough its Branch Manager,
   Branch at Nanded. Respondents

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Mr. R.R. Shaikh , Advocate for the appellant.
Mr. B.N. Gadegaonkar, Advocate for respondent No.1.
Mr. Dhananjay Deshpande, Advocate for respondent No.2.
Mr. A.B. Gatne, Advocate for respondent No.4.

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CORAM : **SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 27th January 2023.
Judgment pronounced on : 1st February 2023.

Judgment:

1. The appellants i.e. the original claimant, has filed this appeal challenging the judgment and award dated 02.07.2004 passed by the learned Chairman, Motor Accident Claims Tribunal, Nanded (hereinafter referred to as "the learned Tribunal") in Motor Accident Claim Petition No. 590/2000, only on the ground of quantum of compensation. The learned Tribunal has granted compensation of Rs. 1,01,582/- from the present respondents in accordance with their proportionate negligence in the accident, alongwith interest at the rate of Rs. 9 % per annum from the date of filing of the petition till it's realization. It appears that the learned Tribunal has granted interest at the aforesaid rate from respondent Nos.3 and 4 from the date of their joining as party respondents in the claim petition. It appears that respondent Nos.2 and 4, who are the respective Insurance Company of the offending vehicles tempo and jeep involved in the accident, have satisfied the award by depositing proportionate amounts as directed by the learned Tribunal.

2. Heard rival submissions and also perused the impugned judgment alongwith the record and proceeding in M.A.C.P No. 590/2000.

3. According to the learned Counsel for the appellant, the learned Tribunal, without appreciating the evidence on record in proper perspective, granted meager amount of compensation by ignoring that the appellant had suffered from permanent disability to the extent of 50%, since she lost her right hand due to accidental injury. He further submits that her notional income was also considered towards lower side i.e. only Rs. 2000/- per month for assessing the future loss of income. Further, it is contended by learned Counsel for the appellant that the learned Tribunal granted lump-sum amount of Rs. 50,000/- towards future loss of income by holding that the appellant, despite amputation of her right hand, was able to do the business of grocery shop.

4. On the contrary, learned Counsel for respective Insurance Companies of tempo and jeep involved in the accident supported the impugned judgment and submitted that the compensation amount has been rightly assessed and there is no need to enhance the same.

5. On perusal of the impugned judgment, it appears that the learned Tribunal has awarded compensation of Rs. 25,000/- to the appellant – claimant on account of permanent disability and around Rs. 25,000/- towards the

medical expenditure, pain and suffering, special diet and conveyance. Moreover, it appears that the learned Tribunal, without any calculation, has granted lump-sum amount of Rs.50,000/- towards future loss of income. However, the Hon'ble Apex Court, in the case of ***Raj Kumar vs. Ajay Kumar*** reported in ***2011(1) SCC 343***, has laid down a specific method for calculating the amount of compensation in personal injury claims by giving the pecuniary as well as non-pecuniary heads. The aforesaid judgment was not in existence at the time of deciding this claim petition, but it is now settled that subsequent judgments are also applicable to the pending cases and appeals for calculating the amount of just compensation. As such, the compensation in the instant case needs to be calculated considering the aforesaid judgment.

6. It appears that the learned Tribunal has granted compensation of around Rs. 25,000/- under the heads, such as, loss of income, pains and suffering, loss of amenities, medical expenses, conveyance and special diet. Moreover, it also appears that the learned Tribunal has granted an amount of Rs. 25,000/- towards "no fault liability" and a lump-sum amount of Rs. 50,000/- towards future loss of income. So far as the amount of Rs. 25,000/- granted under

the heads such as, loss of income, pain and suffering, medical expenses, special diet, conveyance, etc. is concerned, it appears reasonable. However, the future loss of income needs to be determined by considering the percentage of disability of the appellant multiplied by proportionate loss of income. It is significant to note that the learned Tribunal, by considering the business of the appellant being of a grocery shop, has held her monthly income to the tune of Rs. 2,000/-. However, the learned Tribunal should have considered her notional income of Rs. 3,000/- per month since the accident had taken place in the year 2000. Further, it is clearly evident that the appellant has lost her right hand which was her working hand, and therefore, it can safely be held that she lost her working capacity to the extent of 50%. As such, her loss of income per month comes to Rs. 1,500/-, since her notional income of Rs. 3,000/- per month is determined. Thus, her annual loss of income would come to the tune of Rs. 18,000/- (Rs. 1500/- x 12). Further, considering her age of 50 years, the multiplier of "13" is applicable as observed by the Hon'ble Apex Court in the case of ***Sarla Verma vs Delhi Transport Corporation*** reported in ***AIR 2009 SC 3104***. As such, by applying the aforesaid multiplier to the annual loss of income of the appellant, her future loss of income comes to Rs. 2,34,000/-. If the amount of Rs. 26,000/-, as granted by the learned Tribunal under the various heads such as, loss of income, pain and suffering, conveyance, special diet, etc., is added in the aforesaid compensation, the amount of total compensation for which the appellant is entitled, comes to Rs.2,60,000/- which can be a reasonable and just compensation. The aforesaid amount of compensation is inclusive of the amount under Section 140 of the Motor Vehicles Act towards the “no fault liability”.

7. From the impugned judgment, it is evident that the learned Tribunal has apportioned the negligence between the owners of the offending vehicles namely tempo and jeep in 80 : 20 ratio. According to this Court, the aforesaid ratio must be maintained as it is. As such, the respondent Nos.1 and 2 being owner and insurer of the offending tempo bearing registration No. MWP-6936 are jointly and severally liable to pay the amount of Rs. 2,08,000/- to the appellant. However, since they have already paid an amount of Rs. 81,266/- to the appellant, now they are liable to pay an amount of Rs. 1,26,734/- being an enhanced compensation to the appellant. Since the enhanced compensation is determined in the year

2023, the prevailing rate of interest of 6% per annum will be applicable for such compensation from the date of filing of the petition till realization of the amount of compensation.

8. Likewise, respondent Nos.3 and 4 being owner and insurer of the offending jeep involved in the accident, are jointly and severally liable to pay an amount of Rs. 52,000/- to the appellant being contributed in the accident to the extent of 20%. It appears that respondent No.4 has already deposited an amount of Rs. 20,316/- alongwith the interest. As such they are now liable to pay enhanced amount of compensation to the tune of Rs. 31,684/- alongwith interest at the rate of Rs. 6% per annum from the date of their joining as party respondents in this claim petition i.e. 15.09.2003 till realization of the compensation amount. In view of the same, the following order is passed.

ORDER

(i) The appeal is hereby partly allowed.

(ii) Respondent Nos.1 and 2 shall jointly and severally pay the amount of Rs. 1,26,734/- (Rupees One Lakh Twenty Six Thousand Seven Hundred and Thirty Four only) to the present appellant alongwith interest on the said amount at the rate of 6% per annum from the date of filing of the claim petition till it's realization.

(iii) Respondent Nos.3 and 4 shall jointly and severally pay the amount of Rs. 31,684/- (Rupees Thirty One Thousand Six Hundred and Eighty Four only) to the present appellant alongwith interest on the said amount at the rate of 6% per annum from the date of their joining as party respondents in the claim petition i.e. from 15.09.2003 till realization of the amount of compensation.

(iv) The respondents shall deposit their aforesaid proportionate amounts of the enhanced compensation in this Court within three months from the date of this order. The appellant is entitled to withdraw the aforesaid amounts of compensation as and when deposited.

(v) The parties shall bear their own costs.

(vi) The award be modified accordingly.

(vii) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

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