

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 248 OF 2013

Rukmini @ Rakhmabai Sapkal
age : 52 years, Occu.: Business,
Residing at Room No.15,
Shiva Garjana Chawl,
Waghale Wada, Datta Mandir Road, ...Appellant
Santacruz (E), Mumbai 400 055. (Ori. Petitioner)

Versus

1. Tanaji Krishna Bhosale
age : 49 years, Occu.: Business,
Residing at Devadi, Post Ketkavale,
Taluka Purandar, District Pune.
2. The New India Assurance Co. Ltd.,
LIC Building, New Collector Office, ...Respondents
Powai Naka, Satara. (Ori. Respondents)

Mr. Ravindra V. Sankpal i/by M/s. R.V. Sankpal & Associates for the Appellant.

Mr. D. S. Joshi for the Respondent No.2.

CORAM : S. G. DIGE, J.

DATE : 28th February 2023.

JUDGMENT :

1. The Appellant has preferred this Appeal against the dismissal of Claim Petition.

2. It is contention of learned Counsel for the Appellant that the Appellant was injured in the Accident caused on 31st January, 2007. She was admitted in the Hospital. Due to said accidental injury, she cannot work properly. She had to take two months rest. She had suffered loss. The Doctor was examined before the Tribunal to show the disability of the Appellant but Tribunal has not considered evidence on record and dismissed the Petition.

3. Learned Counsel for the Appellant further submits that the Tribunal has erred while passing the Order. The Tribunal has not considered the medical bills produced on record. Hence, requested to allow the Appeal.

4. It is contention of learned Counsel for the Respondent that the Appellant has suffered only CLW injury. The Doctor who has given Disability Certificate was not treating Doctor. The said Doctor had issued Disability Certificate after four years of the accident. It shows that the Disability Certificate was not proper. The Tribunal has considered all the aspects and dismissed the Claim Petition. The Tribunal has found that to get more compensation, the Appellant had tried to fabricate some medical bills and on that basis the Tribunal has imposed cost of Rs.2,000/- on the Appellant. The Order passed by the Tribunal is legal and valid.

5. I have heard both learned Counsel. Perused Judgment and Order passed by the Motor Accident Claim Tribunal, Satara (for short 'the Tribunal').

6. While dismissing the Claim Petition, Tribunal has observed that the Claim Petition is devoid of any merit and only aimed at to have undue gain, sans suffering of disablement, far remains permanent one. The alleged suffering of disablement is totally untrue, based on fabricated evidence, which cannot be acted upon.

7. It is contention of learned Counsel for the Appellant that the evidence of the Appellant is not considered by the Tribunal. To prove the disability, the Appellant had examined herself at Exh.25. She had stated that after the accident, she suffered multiple injuries, head injury and facial injuries. Soon after the accident, she was admitted to the Hospital at Nasrapur. She was there for two days. From Nasrapur, she was shifted to private Hospital at Satara. She was there for seven days.

8. She further stated that due to the accidental injuries, she suffered permanent disability. To prove the disability, the Appellant had examined Dr. Dinkar Dashrath Marulkar at Exh.37. This witness has stated that the Appellant had suffered CLW at right temporal region, right eye-brow and right orbital region. She gave history of giddiness

and fear of fall while walking. This witness examined her and found scar on forehead, frontal region and right eye-brow. Therefore, this witness issued Disability Certificate which is at Exh.38. In cross-examination, this witness admitted that he did not have any clinical test to ascertain giddiness of the Appellant. He certified her to have giddiness on the basis of history given by the Appellant. The Appellant had given C.T. Scan Report to this witness. This witness does not have his own notes about C.T. Scan. This witness further admitted that the subject of giddiness is a matter of expertise by Neuro Surgeon. This witness had not given any kind of treatment to the Appellant. For first time the Appellant visited to his clinic. This witness did not examine the Appellant clinically and issued Disability Certificate.

9. The Disability Certificate Exh.38 shows disability of 12%. From the evidence of Doctor who had given Disability Certificate, it appears that the Appellant had suffered only CLW. Though the Appellant has stated that she was admitted in three hospitals. But no person from these hospitals are examined to show that she was admitted in those hospitals. The Tribunal has rejected the Claim Petition on the ground that the Appellant has overwritten on the C.T. Scan Report of other patient by mentioning her name. In my view, admittedly, the Appellant was injured in accident and the medical bills

which are produced on record are exhibited as Exh.32. These medical bills show that she had paid medical bills of around Rs. 7,400/- and Rs.2,600/- for pain and suffering and convenience. I am considering the Appellant is entitled for these amount. and I pass following Order :

ORDER

- i. Appeal is partly allowed.
- ii. The Judgment and Order passed by the Tribunal is quashed and set aside.
- iii. The Appellant is entitled for the amount of Rs. 10,000/- @ 7.5% per annum from the date of filing Application till realization of amount.
- iv. The Respondent is directed to deposit enhanced amount.
- v. The Appellant is permitted to withdraw the deposited amount alongwith accrued interest thereon.
- vi. All pending Civil Applications, if any, are disposed off.

(S.G. DIGE, J.)