

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 374 OF 2011

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SHRI NATHA DADU GAIKWAID
aged about 52 years, occupation service,
residing at Building No.91, Room No. 870
Transit Camp, Ramabai Colony, m Ghatkopar
(East), Mumbai - 4000 075

....Appellant/
Org. Claimant

Versus

1. Maharashtra State Transport Corporation
Vahatuk Bhuvan, Mumbai Central, Mumbai
-400 008

O.P. No.1

AND

Respondent/Ori.

2. Mr. Gopal Srinivas Upadhya,
1011;1 Mitranagar Society, deep Bunglow
Chowk, Shivaji Nagar, PUNE - 6

O.P. No.2
Respondent/Ori.

AND

3. United India Insurance Company Limited,
Stadium House, Veer Nariman Road,
Mumbai - 400 020
Certificate No.161002131
Policy No. 161002/31/60/6185/95
Validity period from 2.3.1996 to 1.3.1997

Insurer

WITH

FIRST APPEAL NO. 576 OF 2010

SHRIMANTI NATHA GAIKWAIID,
aged about 45 years, occupation maid servant
residing at Building No.91, Room No.870,
Transit Camp, Ramabai Colony, Ghatkopar
(East), Mumbai - 400 075.

.... Appellant/

Org. Claimant

Versus

1. Maharashtra State Transport Corporation
Vahatuk Bhuvan, Mumbai Central, Mumbai
-400 008

O.P. No.1

AND

Respondent/Ori.

2. Mr. Gopal Srinivas Upadhya,
1011;1 Mitranagar Society, deep Bunglow
Chowk, Shivaji Nagar, PUNE - 6

O.P. No.2

Respondent/Ori.

AND

3. United India Insurance Company Limited,
Stadium House, Veer Nariman Road,
Mumbai - 400 020
Certificate No.161002131
Policy No. 161002/31/60/6185/95
Validity period from 2.3.1996 to 1.3.1997

Insurer

....Respondents/Ori.

WITH

FIRST APPEAL NO. 659 OF 2017

MISS DIPTI NATHA GAIKWAIID,
aged about 20 years, occupation : student

residing at Building No.91, Room No.870,
Transit Camp, Ramabai Colony, Ghatkopar
(East), Mumbai - 400 075.

Appellant/
Org. Claimant

Versus

1. Maharashtra State Transport Corporation
Vahatuk Bhuvan, Mumbai Central, Mumbai
-400 008

O.P. No.1

AND

Respondent/Ori.

2. Mr. Gopal Srinivas Upadhy,
1011;1 Mitranagar Society, deep Bunglow
Chowk, Shivaji Nagar, PUNE - 6

O.P. No.2
Respondent/Ori.

AND

3. United India Insurance Company Limited,
Stadium House, Veer Nariman Road,
Mumbai - 400 020
Certificate No.161002131
Policy No. 161002/31/60/6185/95
Validity period from 2.3.1996 to 1.3.1997

Insurer

Mr. B. S. Nayak for the Appellant in all matters.
Ms. Rajlaxmi Punjabi a/w Ms. Drishti Jain i/b P. M. Bhansali for the
Respondent No.1.
Ms. Varsha Chavan for the Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th APRIL 2023.

JUDGMENT :

1. All these three Appeals are preferred against the judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short 'the tribunal'), for enhancement of compensation amount. As these Appeals are out of same accident. Hence, I am deciding these Appeals by this common judgment.

2. It is contention of learned counsel for the Appellant that in Appeal No. 374 of 2011, the claimant has suffered 21% disability. The doctor was examined to prove the disability certificate. In spite of that tribunal has awarded compensation on lower side, without considering monthly income of deceased. The tribunal has Not applied multiplier and has Not awarded future prospects.

3. Learned counsel further submits that in respect of FA/576/2010, the claimant has suffered 10% disability. Doctor was examined to prove the disability, but the tribunal has awarded compensation on lower side which is Not proper.

4. Learned counsel further submits that in respect of FA/659/2017, the claimant has suffered disability of 25%, but tribunal has awarded compensation of Rs.14,000/- without

considering the fact that the claimant was admitted in the Hospital for couple of days. Hence, requested to enhance the compensation in all the Appeals.

5. It is contention of learned counsel for the respondent No.3/ insurance company that the disability certificate in FA/374/2011 and FA/576/2010 were issued after 10 years of the accident. The doctor who treated the appellants did Not examined the claimants, only on the basis of documents produced before him, he issued disability certificate. Learned counsel further submits that while issuing the disability certificate, doctor did Not take the x-ray of the injured part of the body to verify about the disability.

6. Learned counsel further submits that the claimant in Appeal No. 374 of 2011. In cross-examination admitted that, he took treatment as out door patient at Rajwadi Hospital and Rajwadi Hospital had issued a certificate mentioning therein that, he has suffered permanent partial disability of 5%. He further admitted that he has Not filed that certificate on record. It shows that the disability certificate produced before the trial Court was false. The disability certificate was issued after 10 years of accident. Learned counsel further submits that in respect of disability certificate in Appeal No.

576 of 2010. It was issued after 10 years of the date of accident by the same doctor who issued a certificate to the husband of this witness. The said doctor did Not take x-ray before issuing disability certificate. In cross-examination the claimant admitted that her left leg was plastered at Sasoon Hopital, but injury certificate shows there was No injury to left leg. It creates doubt about the disability sustained by the claimant. Learned counsel further submit that in respect of Appeal No. 659 of 2017, No disability was proved before the tribunal. No evidence produced before the tribunal to show that the claimant was absent in the school and she failed in examination. Learned counsel further submits that in all three matters the tribunal has considered all the aspects and on that basis, compensation is awarded, which is sufficient. Learned counsel for respondent No.1 submits that appropriate order be passed.

7. I have heard all learned counsel perused, judgment and order passed by the tribunal. The appellants are seeking enhancement of compensation on the ground of disability suffered by them but tribunal has Not considered this facts as well as the tribunal has awarded compensation on lower side. Admittedly accident occurred on 10 June, 1996 and the disability certificate in all three Appeals

issued on 20/11/2006 by same doctor i.e. Dr. Sujeet Jain. Claimants examined Dr. Sujeet Jain, in his evidence in both Appeals, this witness has stated that on the basis of history given by the claimants and on the basis of examination, he issued disability certificate. He assessed permanent partial disability at 21% in Appeal No. 374 of 2011 and in Appeal No. 576 of 2010 at 10%. In cross-examination, he admitted that he did Not asked patient as to why they came so late for assessment of disability. He did Not take x-ray and on the basis of clinical examination, he assessed the disability. It is significant to Note that the claimant in Appeal No. 374 of 2011 examined himself at Exhibit-'14'. In cross-examination, admitted that he was Not admitted at Rajwadi Hospital, but he took treatment as out door patient at Rajwadi Hospital. The said hospital issued a disability certificate mentioning therein that, this witness suffered permanent partial disability of 5%. He has not filed that certificate. When this witness was taking out door treatment at Rajawadi Hospital and said Hospital issued disability of 5%, it appears that the claimant has suppressed earlier disability certificate and produced the disability certificate of 21%, which was issued after 10 years of the accident. In Appeal No. 576 of 2010, the doctor has given 10% disability after 10 years of

accident.

8. Considering the evidence of doctor and disability certificate issued after 10 years of accident, the claimants have suppressed the fact that earlier disability certificate was issued by Rajwadi Hospital which was about 5% disability. This fact shows that the claimants by producing disability certificate on higher side, wants to more compensation. In Appeal No. 659 of 2017, no disability certificate was produced before the tribunal. It was the case of the claimant, due to accidental injuries claimant failed in examination for two years but no evidence was produced on record in that regard. In all three Appeals, the tribunal has passed the reasoned order and I do Not find any infirmity in it. All these three Appeals are devoid of merit and I pass following order.

ORDER

- i. The three Appeals are dismissed. No order as to cost.

(SHIVKUMAR DIGE, J.)