

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 772 OF 2023

Madhavi Chintamani Shastrabuddhe) ... Appellant
 Age : Adult, Occu : Medical Practioner,)
 R/o. 703/E Ward,)
 Vasudev Apartment, Flat No.2,)
 Shahupuri, Dist: Kolhapur.)

versus

- | | | | |
|----|---|---|---------------------|
| 1 | Jarloksingh H. S. Talwar, |) | |
| | Age : Adult, Occu : Business, |) | |
| | R/o. Karmashetra Building No.10, |) | |
| | DLR, 71, S.S.S.Nagar, |) | |
| | Mumbai – 400 037. |) | |
| 2 | The Oriental Insurance Company Ltd., |) | |
| | Laxmi Commercial Center, |) | |
| | 2 nd Floor, Senapati Bapat Road, |) | |
| | Priyadarshini Society, Dadar West, |) | |
| | Mumbai – 400 028 |) | |
| | And also office at |) | |
| | Opposite Panchsheel Hotel, |) | |
| | Station Road, Kolhapur. |) | |
| 3. | Nandkishore Raghunath Patil, |) | |
| | Age : Adult, Occu : Driver, |) | |
| | R/o. C/o. Jarloksing H.S.Talwar, |) | |
| | Karmkshetra Building No.10, |) | |
| | D.I.R.71, S.S.S.Nagar, |) | Respondents |
| | Mumbai – 400 037. |) | ... (Org.Opponents) |

Mr. Bhushan Walimbe along with Mr. Parth Modak, Advocate for the Appellant.

Mr. Abdul Basit Kudalkar i/b. NDB Law, Advocates for Respondent No.2.

CORAM : ARUN R. PEDNEKER, J.

DATE : 24th JUNE, 2024.

Oral Judgment:

1. Heard learned counsel appearing for the parties.

2. By the present appeal, the appellant/claimant is challenging the order dated 12th September 2019 passed by the Motor Accident Claims Tribunal, whereby meagre compensation is granted to the claimant/appellant for the accidental injuries suffered by the claimant. The challenge is on the ground of insufficient compensation and the finding recorded by the Tribunal on the aspect of loss of income on account of disability.

3. The brief facts leading to filing of the appeal are as under :

3.1. On 18th November 2005, the claimant with her family members was travelling in a Maruti Van bearing No. MH-09-S-2246. Her husband was driving the Maruti car on the correct side of the road. One scorpio car bearing No.MH-01-GA-5500 came from Mumbai side, the said vehicle was in excessive speed and gave dash to the Maruti car. The claimant as well as others sustained injuries. The appellant sustained injuries on her head, chest and eye resulting in loss of vision. An offence was registered against the driver of the Scorpio vehicle being Crime No.169 of 2005. The applicant, at the relevant time, was holding MBBS Degree and was attached to the Hospital and was paid stipend of Rs.8,200/- per month. After the accident, she was admitted as indoor patient for several days. She was kept in the ICU also and later on continued her treatment for a long period.

3.2. The claimant thereafter filed a claim petition for compensation of Rs.8,20,000/- under Section 166 of the Motor Vehicles Act, 1988. In the claim petition, the opponent No.1 was the owner of the Scorpio car, the opponent No.2 was insurer and opponent No.3 was the driver of the Scorpio car.

3.3. The Tribunal formulated the issues as under and finding are rendered thereof :

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether it is proved that the accident dated 18/11/2005 in which the applicant sustained injuries was caused due to rash and negligent driving of Scorpio Car bearing No.MH 09 GA 5500 owned by opponent No.1 and insured by opponent No.2?	..In affirmative
2.	Whether the applicant is entitled for the compensation? If yes, to what amount and from whom?	As per final order
3.	What order?	As per final order

3.4. On consideration of the evidence before the Motor Accident Claims Tribunal in terms of the evidence of Dr. Sonal Joshi, Dr. Ajit Kulkarni, Dr. Prakash Sangvi and Dr. Vilas Aphale, so also the disability certificate at Exhibit-37 and certificate at Exhibit-72, the Tribunal held that the patient is suffering 60% visual perceptual deficit due to bilateral occipital contusion. The certificate at Exhibit-72 shows 75% visual disability and it is mentioned in the certificate that the **vision is restricted**

to 10 degrees 6/18 (p), 6/24 (p) Central. The Tribunal also held that the claimant could not walk and or do her work and her movements are restricted. The Tribunal further held that the claimant would find it difficult in reading, crossing road, seeing the vehicle come from right side and practicing medical profession. The Tribunal finally held that the claimant would not be able to read easily, cross the road easily and see the vehicle from right side and would **somewhat suffer in her medical profession.** The Tribunal held that such **kind of visual disability would affect the earning capacity of the applicant to the extent of 10% only.**

4. The learned counsel appearing for the claimant primarily challenges the above finding of the Tribunal that the earning capacity of the claimant would be affected to the extent of 10% only. He has taken me through Exhibits 37 and 72. Exhibit-37 is the certificate issued by Dr. Sonali Joshi, where she has stated that the patient is suffering from 60% visual perceptual deficit due to bilateral occipital contusion. So also the disability certificate issued by the Government Hospital at Exhibit-72 indicates that the vision is restricted to 10 degrees 6/18 (p), 6/24 (p) (Central). It is further observed in the certificate (Exhibit-72) that the patient is suffering from 75% visual disability. The learned counsel for the claimant has taken me through the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as "1995 Act"). Section 2(b) defines "blindness". Section 2(b)(iii) reads as under :

“2(b) “blindness” refers to a condition where a person suffers from any of the following conditions, namely:-

(i)...

(ii)...

(iii) **limitation of the field of vision subtending an angle of 20 degree or worse;**”

5. The learned counsel for the claimant submits that the blindness refers to a condition where a person suffer from limitation of the field of vision subtending an angle of 20 degree or worse. The learned counsel further submits that the definition of blindness has undergone a change. In The Rights of Persons with Disabilities Act, 2016 (hereinafter referred as “2016 Act”) “blindness” is defined in Schedule B as under:

B. Visual Impairment-

(a) “blindness” means a condition where a person has any of the following

(i) total absence of sight; or

(ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or

(iii) limitation of the field of vision subtending an angle of less than 10 degree.

(b) “low-vision” means a condition where a person has any of the following

conditions, namely: -

(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or

(ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

In terms of 2016 Act, blindness would be limitation of the field of vision subtending an angle of less than 10 degree. The learned counsel for the claimant submits that once the vision is less than 10 degrees, the person is considered legally blind for all purposes of the Act. He submits that in view of the provisions of section 2(b) of the 1995 Act

and Schedule B of the 2016 Act, the claimant is required to be considered to be completely blind. He further submits that in any event, the functional disability of the doctor having a vision of 10% degrees 6/18 (p), 6/24 (p) Central should be considered blind.

6. The claimant's vision is less than the low vision and falls within the category of blindness. The loss of central eyesight of the claimant would amount to an end to the claimant's earning capacity as an MBBS doctor. The same is also reflected in the evidence of the doctor examined on behalf of the claimant. The claimant will not be able to treat patient with such diminished eye-sight. In the instant case, the vision being restricted to 10 degree (central) and being legally blind, it can be said that the claimant/doctor has lost her capacity to earn income as a doctor. Thus, I hold that the earning capacity of the claimant is completely diminished and that she would not be able to earn income as an MBBS doctor on account of her vision being restricted to 10 degrees 6/18 (p), 6/24 (p) (Central). As such, the finding of the Tribunal to the extent that the doctor/claimant would suffer a loss of 10% in her earning capacity is set-aside.

7. Coming to the next aspect of compensation, the accident has occurred in the year 2005. At the relevant time, the doctor was earning Rs.8200/- as stipend per month. She had completed MBBS just one year prior to the accident.

8. Learned counsel for the claimant relied upon the judgment of the Madras High Court **in the case of the Managing Director, Metropolitan Transport Corporation Ltd. Chennai versus S. Mariam Beevee and anr. Reported in 2013 SCC Online Mad 3352.** In the said case, the accident had taken place on 25th May 2008 and the claimant, at the relevant time, was 19 year old and was pursuing first year of MBBS course, the High Court in the facts of that case, held deceased to be earning Rs.30,000/- per month. In the case of **New India Assurance Co.Ltd. Versus Ganga Devi and others reported in 2009 SCC Online Del 4335,** the Delhi High Court was considering the case of 24 year old, who met with the accident and had completed MBBS and was getting stipend of Rs.5,000/- per month, the Court considered the income of the deceased at Rs.18,000/- per month.

In the case of **Ashvinbhai Jayantilal Modi versus Ramkaran Ramchandra Sharma and anr. Reported in (2015) 2 SCC 180,** the Hon'ble Supreme Court considered notional income of 19 year old MBBS student in the year 2002 at Rs.25,000/- per month.

The Hon'ble Apex Court in the case of **Bishnupriya Panda versus Basanti Manjari Mohanty and anr. reported in 2023 ACJ 2393** considered the case of 21 year old, who was a student of 4th year of MBBS in the year 2013. In the said case, the Hon'ble Apex Court considered the notional income of the deceased at Rs.50,000/- per month.

9. Considering the above judgments as a guiding factor, in the facts of the instant case, where the claimant had completed MBBS one year prior to the accident and was getting stipend of Rs.8200/- per month in the city of Kolhapur, it can be safely considered that she would get income of Rs.**30,000/-** per month in her regular practise as an MBBS doctor. The Hon'ble Supreme Court in the case of **Meena Devi versus Nunu Chand Mahto @ Nemichand Mahto and ors. reported in (2023) 1 SCC 204** and in the case of **Nagappa versus Gurudayal Singh and ors. reported in (2003) 2 SCC 274** has held that the Tribunal has to grant Just Compensation and the compensation can be granted beyond the claimed amount.

10. In view of the discussion, the claimant is entitled for following compensation :

Particulars	Rs.	Amount
Annual Notional Income of the claimant (Rs.30,000/- pm x 12)	Rs.	3,60,000.00
40% Future Prospects	Rs.	1,44,000.00
Total	Rs.	5,04,000.00
Loss of Income (Rs.504000/- x 16(multiplier (32 years age))	Rs.	80,64,000.00
Pain and Suffering	Rs.	1,50,000.00
Loss of Amenities	Rs.	1,50,000.00
Medical Expenses	Rs.	90,000.00
Loss due to disability and disfigurement	Rs.	1,50,000.00
Special Diet	Rs.	15,000.00
Transportation and Conveyance	Rs.	10,000.00
Total Compensation	Rs.	86,29,000.00

The Tribunal has awarded Rs.2,89,000/-, if this amount is deducted from the amount of Rs.86,29,000/- considered by this Court, the total compensation comes to Rs.83,40,000/-. The claimants are entitled for this enhanced compensation amount of Rs.83,40,000/- with simple interest @ 7.5% from the date of filing of claim petition.

11. In view of above observations, I pass the following order :

ORDER

1. The appeal is allowed.
 2. The claimant is entitled for enhanced compensation of Rs. 83,40,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight (8) weeks from the receipt of this order.
 4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 5. The claimants shall pay court fees on enhanced amount as per Rule.
12. Pending applications, if any, stand disposed of.

(ARUN R. PEDNEKER, J.)