

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 122 OF 2003**

Sunanda Ashok Kulkarni, Age 45) Appellant
Occup. Legal Practitioner and household,) (Original
R/o. Savitri Road, Mahad, District Raigad) Claimant)

versus

- 1 Gurubhaj Singh H. Rajpal, Age Major,)
Occup. Business,)
R/o. H.No. 110, Jogupalya, Ulsoor, Bangalore)
2 The Oriental Insurance Company Ltd.,) Respondents
Branch Office at Solapur.) (Original
) Opponents)

Mr. Yogesh Pande, Advocate for the appellant/claimant.

Mr. Mohit Turakhia i/b. S. S. Vidyarthi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY, 2025.

JUDGMENT :

1. This appeal is preferred by the appellant/claimant for enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that due to accidental injuries the appellant has suffered 70% permanent physical disability. The doctor has issued disability certificate but the Tribunal has awarded Rs.25,000/- as compensation amount, which is on lower side. Learned counsel further submitted that the claimant was

practising lawyer, she was admitted in various hospitals, but these facts are not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that the disability of the claimant has not been proved. The disability mentioned in the disability certificate is suspicious as the concerned Doctor has not been examined to prove the disability. The Tribunal has considered all the facts, on that basis, reasoned judgment and order is passed and requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

5. To prove her case, the claimant has examined herself. She has stated that due to accidental injuries, she has received serious injuries on her head and other parts of body. After the accident, she has not fully cured and she gets giddiness on some occasions with headache. She gets pain in her knee while climbing and also she is not in position to sit comfortably. There was trauma to her right ear, therefore, she is not in position to hear properly. She had disfiguration on her face because of accidental injuries. Doctor Bhalchandra has issued disability certificate. During pendency of the claim petition, he has passed away. While dealing with the issue of disability of the appellant, the Tribunal has observed that as per claimant's case, she had initially taken treatment in Jagdale Mama

Hospital, Barshi, there she took treatment for a night, and thereafter, she had taken treatment from Dr. Bhalerao. To prove the nature of injuries caused to her in the said accident, she has mainly relied on the certificate of disability issued to her by Dr. Bhalerao, Orthopedic Surgeon from Poladpur. The said certificate is at Exhibit – 36. She has stated that Dr. Bhalerao, who issued the said certificate has been expired.

5.1. The learned Tribunal further observed that after perusing the said certificate, it is revealed that the said certificate was issued by Dr. Bhalerao on 31st May, 1995 whereas the accident occurred on 14th April, 1995 i.e. this certificate is issued within 1 ½ months of the accident. In the said certificate, it is mentioned by Dr. Bhalerao that she has taken treatment at Jagdale Mama Hospital at Barshi for a day and thereafter he treated her. In spite of these facts, there is no documentary evidence brought on record by the claimant to show as to what type of treatment was taken by her from Dr. Bhalerao for a period from 15th April, 1995 to 31st August, 1995 i.e. for a period of 3 ½ months.

5.2. The learned Tribunal further observed that it is a matter of record that immediately after the accident, the claimant was taken to Jagdale Mama Hospital, Barshi, for treatment. The Medical Officer at Jagdale Mama Hospital must have issued medicolegal certificate in respect of the injuries which would have been there on the person of the claimant caused in the said accident. In spite of this fact, the claimant has not taken any care to produce on record the medicolegal certificate issued

by the Medical Officer of Jagdale Mama Hospital, Barshi, for the nature of injuries caused to her in the said accident.

5.3. The Tribunal further observed that M.A.C.P. Nos.157 of 1996 and 224 of 1997 have been filed by other injured in the said accident and in those cases, the certificate from Jagdale Mama Hospital, Barshi has been produced on record, but the same has not been produced on record in the present case, therefore, there is scope of adverse inference to be drawn against the claimant. The claimant is a residence Mahad and in spite of that, she took the treatment from doctor at Poladpur. Even apart from this, the Doctor who has issued the said certificate has expired during the pendency of this petition, and therefore, the contents of the said certificate are not proved by the claimant and under such circumstances, the claimant should have gone to some other Orthopedic Surgeon of Government Hospital, to find out the actual nature of permanent disability caused to her.

5.4. The learned Tribunal further observed that no doubt in the certificate of Dr. Bhalerao, it is mentioned about the nature of the permanent disability caused to claimant because of the accidental injuries but in absence of the certificate from the Jagdale Mama Hospital, it is very difficult to accept the injuries which are mentioned in the certificate of Dr. Bhalerao, whether those injuries have resulted in causing the permanent impairment which has been mentioned in the said certificate. In the oral deposition of the claimant, she is not in a position to tell the amount of

expenses for her treatment. The claimant has produced some hospital and medicine bills on record at Exhibit-5.

5.5. It appears from the record, the claimant has spent Rs.230/- towards the charge of the Jagdale Mama Hospital, Barshi. The bill of medicines which is produced by the claimant of C.M. Sheth and Company, which is having of its office at Dadli, Mahad and Raigad. The bill of Rs.4,219/- is in the name of the claimant and it is mentioned that some medicine was purchased on 19th May, 1995 and some were purchased on 4th May, 1995.

5.6. The Tribunal further observed that after going to the said credit memo, it appears that M/s. C. M. Sheth and Company is a wholeseller in medicines and is not a retailer and it is very difficult to accept that the claimant would purchase the medicine in bulk from wholeseller. It pertinent to mention here that husband of the claimant is a doctor, therefore, it is possible that he must have been purchasing medicine for his dispensary and it appears that the same Company has therefore, issued a credit memo which has been produced on record by the claimant in the present case. Therefore, it cannot be said that the claimant has spent Rs.230/- at Jagdale Mama Hospital, Barshi, for medical expenses.

5.7. Learned Tribunal further observed that, except at Exhibit-36, there is nothing mentioned about fracture injuries caused to the claimant in the said accident and, in spite of it, Dr. Bhalerao has mentioned disability to the extent of 70% caused to the claimant, which cannot be

believed as the appellant/claimant failed to bring sufficient evidence on record to show actual injuries caused to her in said accident and that those injuries, caused permanent impairment as mentioned in the certificate issued by the Dr. Bhalerao at Exhibit-36.

5.8. The Tribunal further observed that it is possible that in the said accident some hematoma must have been caused to her head and C.L.W. must have been caused to her knee. Taking into consideration these facts, the maximum period of one month can be considered as the period during which the claimant was not in position to work at all due to the accidental injuries and there was total loss of income during that period. Considering the over all evidence on record, the Tribunal has awarded Rs.25,000/- as compensation. I do not find infirmity in the observations of the Tribunal about disability of the claimant and medical expenses.

5.9. In my view, admittedly, the claimant had suffered accidental injuries. She failed to prove the disability caused to her due to accidental injuries. Initially she had taken treatment at Barshi, thereafter, she took treatment at Poladpur as she had suffered the injuries, hence, the compensation of Rs.25,000/- awarded by the Tribunal is on lower side. Hence, I am considering Rs.50,000/- lumpsum compensation for injuries caused to her, for pain and suffering, conveyance and loss of income.

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

O R D E R

- (1) The appeal is allowed.
 - (2) The claimant is entitled for enhanced amount of Rs.50,000/- @ 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 six weeks from receipt of this order.
 - (4) The claimant is permitted to withdraw the compensation amount along with accrued interest thereon.
 - (5) The claimant shall pay deficit court fees on enhanced amount, if any, as per Rule.
 - (6) Record and Proceedings be sent back to the Tribunal.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)