Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1094 OF 2024

Prajkta Raman Patil …Appellant
Versus
Juber Ahamad Shaikh and ors. …Respondents

Mr. Sanjay Ghaisas, for the Appellant.
Mr. Ketan Joshi, for the Respondent No.3.

CORAM: R. M. JOSHI, J.

DATED: 10th FEBRUARY, 2026.

PC:-

1. This appeal is filed by the Claimant seeking enhancement of the compensation granted by the Tribunal by impugned judgment and award dated 17th October, 2023 passed by Chairman, MACT Raigad-Alibag in MACP Claim Petition No.5 of 2015.

2. There is no dispute about the fact that on 29th August, 2014 an accident occurred in which the Claimant while crossing the road was dashed by the Opponent's motor-cycle bearing registration No.MH-04/AY-2098. The said vehicle is owned by Opponent No.1 and insured with Opponent No.3. Opponent No.1 owner inspite service of notice remained absent before the Tribunal. Hence, the Claim Petition proceeded ex-parte against him. Initially, claim was filed against Opponent No.2 with ICICI Lombard General Insurance Company Limited. Later on amendment came to be effected to the Claim Petition by joining Respondent No.3-New India Insurance Company Limited, as Opponent to the claim. This Opponent filed written statement at Ex.34 contending that rider of the motor-cycle was not having driving license at the time of occurrence of the accident and therefore, Insurer is not liable to pay compensation. The Insurer denied the contentions of the Claimant with regard to the age, income and disability.

3. On behalf of the Claimant her husband's evidence (Mr. Raman Patil) at Exhibit-96 came to be recorded, whereas the Insurer examined its Officer-Smt. Manali Milind Rane at Exhibit 86. Tribunal partly allowed claim of the Claimant and granted total compensation of Rs. 29,33,539/- with interest.

4. Present appeal is filed for enhancement of the compensation basically on under three heads i.e. future treatment, attendant charges and special diet.

5. Learned counsel for the Appellant submits that the evidence of the Claimant with regard to the future treatment and attendant etc. has gone unchallenged. It is his further submission that in such circumstances Tribunal was not justified in granting compensation of Rs.2,00,000/- only, which is not a fair compensation. It is his further submission that the Tribunal ought to have awarded interest from the date of the filing of the Claim Petition and not from the date of the order as done here in this case.

6. Learned counsel for the Insurer supported the impugned judgment and award. It is his submission that the Tribunal committed no error in granting compensation of Rs.2,00,000/- for future treatment, attendant charges and special diet. It is his submission that unless evidence was led by the Claimant to support her claim, the Tribunal was not expected to grant compensation higher than the one granted. To support his submission, he placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Abimanyu Partap Singh Versus Namita Sekhon and anr. reported in (2022) 8 supreme Court cases 489***. On the point of denial by the Tribunal of interest during the pendency of the Claim Petition, he drew attention of the Court in paragraph 22 of the judgment which according to him is sufficient explanation for denial of interest to the Claimant. In any case, according to him, no interest could be made to be payable by Insurer as it was joined as party Opponent in 2019.

7. There cannot be any dispute with regard to the proposition of law that Claimant is required to prove the claim on preponderance of probability. Evidence of her husband was led. No objection is raised by the Opponents to said evidence being recorded by him in place of Claimant. He testified about the physical condition of Claimant and she being bed-ridden. He also states about expenses incurred on medical treatment of the Claimant with further statement that said medical treatment is required in future too. Similarly, specifically, it is claimed that the Claimant requires attendant.

8. There is no dispute about the fact that the Claimant is bed-ridden. The testimony of the medical officer examined by the Claimant sufficiently proved the said fact. The evidence of husband of the Claimant with regard to the present treatment, so also future treatment, as well as requirement of the attendant has not been challenged in the cross-examination. The Claimant has therefore succeeded to prove the claim on all three counts.

9. Having considered the age of the Claimant and also in view of the fact that she would be bed-ridden during her entire life, the Tribunal ought to have granted appropriate compensation, which is just and proper in the facts of the case. The Tribunal has failed to take into consideration the unrebutted evidence of the Claimant with regard to the future treatment and requirement of the attendant so also special diet. In such circumstances, the Tribunal was not justified in granting compensation only to the extent of Rs.2,00,000/-. Owing to the age of the Claimant and her requirement as a woman, who is bed-ridden, the compensation as claimed by the Claimant deserves to be granted. Considering the uncertainities of life so also change in the cost of living, it would be difficult to assess the compensation in exact mathematical calculation. Suffice it to say that, this is a fit case wherein compensation needs to be enhanced by Rs.9,00,000/-.

10. In so far as the denial of the interest during the pendency of the Claim Petition is concerned, no doubt the Tribunal has recorded reasons in paragraph No.22 of the judgment including that though proper steps were taken for the purpose of prosecuting the claim, the Tribunal, however, failed to take into consideration that the Claimant is bed-ridden woman and unlike the fit person who can pursue with the litigation with his lawyer, it was not possible for the claimant to do so.

11. In such circumstances, the Tribunal should not to have denied the interest during the pendency of the claim petition. It is pertinent to note that the Claimant comes from lower financial strata of the society, she doing work as 'a tailor' with income of Rs.6,000/- per month only. Needless to say that, she would have needed compensation at the earliest, more particularly, considering her requirements being person bedridden for rest of life. Thus, it cannot be said that the delay has been caused in prosecuting of the Claim Petition with an intention to earn interest out of the same. As far as contention of Insurer with regard to interest, it is pertinent to note that liability of the Insurer is to indemnify the insured and hence, liability of insured becomes relevant, therefore, sake of joining of Insurer becomes immaterial. Thus, there cannot be any dispute that there would be liability of the Insurer to pay the compensation including interest.

12. Hence, appeal stands allowed.

13. The Appellant-Claimant is entitled to receive additional compensation of Rs.9,00,000/- with interest at the rate of 9% per annum. The Claimant will be entitled to receive interest on the entire amount of compensation till the realization of the amount.

14. Appeal stands disposed of.

(R. M. JOSHI, J.)