IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1126 OF 2025

Sarita Tushar Agrawal …Appellant
Versus
1. Mahendra Madhukar Luley
(Owner of Bus No. MH-31/CB-7700)
2. National Insurance Co. Ltd. …Respondents

Ms. Ketaki Gokhale *i/b Avinash M. Gokhale, for Appellant.*
Mr. P.A. Narayanan*, for Respondent No. 2.*

CORAM : R.M. JOSHI, J.
Date : January 29, 2026

PC :

1. By consent of both sides heard finally at the stage of admission.

2. This Appeal under Section 173 of the Motor Vehicles Act, 1988 takes exception to the judgement and award dated 14th March, 2024 passed by the Member, Motor Accident Claims Tribunal, Kalyan, Dist. Thane ("***the Tribunal***") in M.A.C.P. No. 119 of 2011, whereby, the Tribunal has granted compensation of Rs. 12,61,400/- with interest at rate of 6% per annum from the date of filing of the application till the realization of the amount came to be awarded.

3. There is no dispute with regard to the fact that on 25th May, 2010, an accident occurred involving a motor vehicle, i.e., bus, bearing registration No. MH-31-CB-7700, in which the Claimant sustained serious injuries. It has further come on record through the evidence before the Tribunal that on account of said injuries, the Claimant lost her one eye. In fact, the eye was required to be removed by surgery. In these circumstances, it is the case of the Claimant that she was conducting the business of beauty parlour prior to occurrence of the accident, and, due to the injuries sustained and disabilities caused to her in the accident, she is unable to do the said business. The Claimant thus contends about 100% loss of income on account of the disabilities sustained by her.

4. Learned Counsel for the Appellant-Original Claimant submits that though the Tribunal has accepted the evidence led by the Claimant with regard to removal of one eye and the disability is considered to the extent of 40%, the Tribunal has failed to take into account that the functional/occupational disability extend to 100%. It is her submission that the Claimant had led evidence on oath with regard to her conducting the business of beauty parlour prior to the occurrence of the

accident. Learned Counsel for the Appellant further submits that the Tribunal has also failed to consider the future prospects which would be 40% owing to the age of the Claimant. The Tribunal has also not considered grant of future prospects as contemplated by the judgment of the Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi.*** [1] Having regard to the age of the Claimant, she would be entitled to receive additional of 40% towards future prospects while computing loss of income.

5. It is her further contention that in the cross-examination, it has come on record that the Claimant has acquired the said qualification for running a beauty parlour, though documentary evidences are not placed on record to that effect. According to her, the Claimant was required to prove the case on probability and the evidence led makes her case probable. It is also her contention that the 100% loss of functional/occupational disability be accepted. The impugned judgement is also challenged on the ground that the Tribunal has erred in taking into account notional income at the rate of Rs. 6,000/-, which should have been Rs. 10,000/- according to the Learned Counsel for the Appellant.

1 (2017) 16 SCC 680

6. Learned Counsel on behalf of the Insurer vehemently opposed the enhancement of the compensation. It is his submission that the Tribunal has rightly considered the evidence of the Doctor indicating 40% disability being caused on account of the removal of one eye. It is his further submission that even notional income accepted by the Tribunal cannot be called as perverse finding in order to cause interference therein. According to him, this is not the case wherein the Claimant could not perform any other work, so thereby she has led to a situation wherein she won't earn anything. On these amongst other contentions, he seeks dismissal of the Appeal. There is no challenge to the impugned judgment and award by insurer or owner of offending vehicle. The factum of accident, negligence of driver of vehicle causes of injuries and consequential disability are not issues which are sought to be agitated herein.

7. Needless to say that the Claimant is required to prove her case on preponderance of probability. She examined herself on oath and specifically plead that she was doing the business of beauty parlour prior to occurrence of accident. She has further categorically stated about her inability to conduct the said business any more owing to the disability

caused post accident. In the cross examination, it has come on record, that the Claimant underwent course for running a beauty parlour. In such circumstances, even though, there is no documentary evidence on record, the Court find no reason to discard the said evidence of the Claimant on the point that she was doing the said business. Considering the nature of work required to be done in the beauty parlour business, loss of one eye obviously would result into making the Claimant disabled to conduct the said business completely. This Court, therefore, finds substance in the contention of the Counsel for the Appellant that the Tribunal ought to have accepted 100% functional/occupational disability of the Claimant. Insofar as the notional income considered by the Tribunal in question, once it is held that the Claimant was doing business of beauty parlour, she would at least earn sum of Rs. 10,000/- per month.

8. The Appellant, therefore, would be entitled to receive following amount towards compensation :

Sr. No.	***Head***	***Amount***
1.	*Loss of earning capacity due to disability:*	
	Annual income (10,000x12)	*1,20,000/-*

	Future Prospects (40%)	*1,68,000/-*
	After multiplying by 18	*30,24,000/-*
	Functional disability 100%	*30,24,000/-*
2.	*Medical bills*	*72,000/-*
3.	*Hospital expenses*	*5,21,000/-*
4.	*Pain & Suffering*	*1,00,000/-*
5.	*Attendant and convenience charges*	*25,000/-*
6.	*Special diet*	*25,000/-*
	Total	***Rs. 37,67,000/-***
	Less: Awarded by Tribunal	*Rs. 12,61,400/-*
	Enhanced Compensation	***Rs. 25,05,600/-***

9. In such circumstances, the Appeal deserves to be partly allowed, and, as such, the same stands partly allowed in the following terms :

ORDER

i. Appeal is ***partly allowed.***

ii. The Claimant would be entitled to receive a sum of Rs. 25,05,600/- along with interest at the rate of 6% per annum which shall be in addition to compensation granted by the Tribunal.

iii. The Claimant shall be entitled to enhanced compensation with interest as awarded by the Tribunal.

iv. Respondent No.2 – Insurance Company shall deposit the enhanced amount within six weeks.

v. The Appellant to pay additional Court fee, if any, as per rules.

vi. Appeal stands ***disposed of*** in the aforesaid terms.

vii. No order as to costs.

viii. In view of disposal of Appeal, pending applications, if any, shall also *disposed of*

[R.M. JOSHI, J.]