

(2019) 11 BOM CK 0050
In the Bombay High Court
Case No : First Appeal No. 2590 Of 2018

Deepali

APPELLANT

Vs

Krishna And Ors

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Citation : (2019) 11 BOM CK 0050

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : K.H. Dongare, V.B. Patil, M.R. Deshmukh

Final Decision : Partly Allowed

Judgement

1. Present appeal has been filed by the original claimant for enhancement in the compensation granted by the tribunal.

2. Present appellant had filed Motor Accident Claim Petition No.829 of 2012 before Motor Accident Claims Tribunal, Aurangabad contending that she has suffered permanent disability in accident dated 10.03.2012 in front of Temple of God Rama, near Baba Petrol Pump, Railway Station Road, between Scooty Suzuki Access bearing No.MH-20-BZ-4702 and truck bearing No.CG-07-C-1305. According to the claimant, she was driving the Scooty and her sister was the pillion rider. When they reached near the spot at about 9.00 p.m, they were dashed by the truck from backside. The said accident took place due to the sole negligence on the part of the truck driver. Applicant got serious injuries whereas her sister after sustaining serious injuries, expired. Applicant was treated in Seth Nandalal Dhoot Hospital, Aurangabad. She has undergone operations. However, she sustained permanent disability. She was assistant professor with Hi-Tech Institute of Technology, Bajaj Nagar, Waluj, Aurangabad getting monthly salary of Rs.38,068/-. She has lost the job because of the accident. The said truck was owned by respondent No.2 and driven by respondent No.1. It was insured with respondent No.3 on the date of the accident. Hence, the compensation has been

claimed from all the three respondents jointly and severally.

3. Matter proceeded ex-parte against respondent Nos.1 and 2. Respondent No.3-Insurance company filed written statement and denied all the averments in the petition. It was contended that the accident had taken place due to the negligence on the part of the applicant herself. She was carrying two children on Scooty along with her sister which was against the traffic rules. It is denied that the accident was caused due to the negligence on the part of the driver of the truck. The statutory defence has been raised that the driver of the truck had no valid and effective driving licence to drive the truck on the date of the accident.

4. Taking into consideration the rival contentions issues came to be framed. Only the applicant has laid evidence. Taking into consideration the evidence laid, the learned tribunal has held that the applicant has proved that the accident took place due to the sole negligence on the part of respondent No.1-driver of the truck. She has also proved that she has sustained permanent physical disability. The insurance company has failed to prove breach of terms of policy and therefore, all the three respondents are liable to pay compensation to the applicant jointly and severally. Compensation of Rs.4,10,000/- has been awarded together with interest. This amount is challenged and enhancement is sought by the applicant-appellant in this appeal.

5. Heard learned Advocates Mr. K.H. Dongare and Mr. V.B. Patil for appellant and learned Advocate Mr. M.R. Deshmukh for respondent No.3-Insurance company. Respondent No.2 was served as per order of this Court dated 18.03.2019. Respondent No.1 was not served.

6. It has been vehemently submitted on behalf of the applicant/appellant that the learned trial Court though held that applicant has suffered permanent physical disability to the extent of 40%, yet, did not consider that there is any loss of income of the applicant. The certificate Exhibit-39 has been duly proved through P.W.-2 Dr. Parmeshwar Jaiswal. When she has suffered functional disability and it has also come on record that now she cannot perform her duties as before, the learned trial Court ought to have granted just compensation by applying multiplier method. The reasoning given by the learned trial Court for not granting compensation, for the loss already sustained and towards future losses, is perverse. The applicant is therefore, claiming compensation of Rs.43,20,941/- and restricted the same to Rs.8,00,000/- for the purpose of Court fees.

7. Learned Advocate appearing for the insurance company supported the reasons given by the learned trial Court while computing the compensation. It has been vehemently submitted that after the accident, when the applicant was recovered she joined her services, but then thereafter has voluntarily given resignation. No evidence has been produced on record to show that there were such circumstances having nexus to the accident that she could not have performed her services and therefore, constrained to give resignation. When the witness was available and applicant could have produced evidence on record, she has

abstained from it. The doctor who had issued the disability certificate does not say that the applicant cannot do work as before. Therefore, whatever amount has been awarded by the learned trial Court is just and proper.

8. At the outset, it can be seen that the insurance company has not filed any appeal and therefore, as regards those findings, which have gone against the insurance company as well as other respondents are concerned, they have achieved finality. They need not be considered here in this appeal. The scope of the appeal is therefore, limited to the quantum of compensation. Hence, following point arise for determination. Findings and reasons for the same are as follows:

(i) Whether the learned trial Court was justified in granting compensation of Rs.4,10,000/- together with interest?

9. As aforesaid the learned trial Court has held that the accident took place due to the negligence on the part of respondent No.1 and the applicant has suffered permanent physical disability in the said accident. It has also been held that the insurance company failed to prove breach of terms of policy and therefore, all the respondents have been held liable to pay compensation jointly and severally.

10. As regards the compensation is concerned, it can be seen that the medical bills produced by the applicant have been got proved through P.W.-3 Dnyaneshwar Pawar, P.W.-4 Dnyaneshwar Rathod and P.W.-5 Sudarshan Gavle. They are to the tune of Rs.2,50,000/- in all. There is no dispute about this amount to be recovered from the respondents. It has been deposed by P.W.-2 Dr. Parmeshwar Jaiswal that he had examined the applicant on 18.12.2014 and issued disability certificate Exhibit-39. According to him, the permanent physical disability which has been sustained by the applicant is 40%. While refusing to grant any compensation by multiplier method, the learned tribunal has taken into consideration the salary certificate Exhibit-103 which was proved through P.W.-6 Vidhesh Ingale. The said document and the testimony of the said witness would show that applicant was serving as professor and was getting salary of Rs.33,088/- per month. The salary certificates of August 2014 and May 2014 have also been produced at Exhibit-104 and 105. They show the name of the present applicant/appellant. The accident had taken place on 10.03.2012. That means even till May 2014, so also till August 2014, by way of salary certificate Exhibit-104, it reveals that she was working and the last salary which she had taken in August 2014 was to the extent of Rs.45,860/-. P.W.-6 Vidhesh Ingale has stated that applicant gave resignation on 30.08.2014. It has not been brought on record through this witness or through any other witness by the applicant that due to her physical disability she had given the resignation. Copy of her resignation has not been produced. Nor it has been got produced through the proper witness. When she could perform her duties for about one and half year after her accident, it cannot be stated that there was any such situation which would relate to the accident, had prompted her to resign. Therefore, the learned trial Court was justified in not applying the multiplier method, though it would be

a general rule. It cannot be stated, therefore, that there was actual financial loss to the applicant after the accident.

11. As regards other non pecuniary damages are concerned, the learned trial Court has awarded amount of Rs.50,000/- towards permanent disability. However, it is to be noted that the disability which has been proved through Exhibit-39 is to the extent of 40% and the medical papers would show that she was required to undergo operations of her leg on three occasions. The said amount appears to be on the lesser side, hence, it is required to be increased. For the permanent disability, amount of Rs.1,00,000/- is awarded. Under the head of pain and suffering also, the learned trial Court had awarded only Rs.40,000/- which needs to be enhanced to Rs.1,00,000/-. The other amounts i.e. Rs.20,000/- towards loss of future happiness, Rs.20,000/- towards loss of shortening of life span, Rs.10,000/- for special diet, Rs.10,000/- for attendance charges and equal amount towards transportation charges require no modification.

12. The only fact that is required to be further considered is that as per the testimony of P.W.-6, for about two years, applicant had not joined the services and he says that the college has not given her salary for that period. Important point is that he had not produced the leave account of the applicant and exact period of her absency. He has produced salary sheet of the applicant for May 2014 till August 2014. That means, she was on duty at that time. In absence of the said particular record and the un-refuted fact that the college had not given her salary during the period of her absency or leave period, so also taking into consideration the duration of the treatment which she has undergone, the applicant will be entitled to get compensation for 12 months taking it as rest period at the rate of Rs.33,000/- which is on the basis of salary certificate Exhibit-103 for December 2011. That amount comes to Rs.3,96,000/-.

13. As aforesaid, the learned trial Court has granted amount of Rs.2,53,000/- towards hospital bill and purchase of medicines and that amount does not require any change. The total amount to which the claimant is entitled to, is Rs.9,16,000/ (2,50,000 + 1,00,000 + 1,00,000 + 20,000 + 20,000 + 10,000 + 10,000 + 10,000 + 3,96,000). The amount which was awarded by the trial Court cannot be said to be just and proper. Taking into consideration the injuries sustained, treatment undertaken by the applicant. Though the appellant has claimed compensation of Rs.43,20,941/-, which is very much on the higher side, yet, restricted the compensation to Rs.8,00,000/- which is on the lower side. It is the duty of this Court to grant just and proper compensation. The deficit Court fee can be recovered and undertaking to that effect is already filed by the appellant. Hence, following order is passed:

ORDER

I) The appeal is hereby partly allowed.

II) The judgment and award passed in M.A.C.P. No.829 of 2012 by learned

Member, Motor Accident Claims Tribunal, Aurangabad dated 27.04.2018 is hereby set aside and modified to the extent of quantum only as follows :

"respondent Nos.1 to 3 shall jointly and severally pay sum of Rs.9,16,000/- (Nine Lakhs Sixteen Thousand only) (inclusive of amount under no fault liability) to the applicant along with interest at the rate of 9% per annum from the date of the filing of the petition till realisation of the entire amount."

III) The amount already deposited towards the said judgment and award be adjusted towards the modified award.

IV) It is clarified that the rest of the award is kept as it is.

V) No order as to costs.

VI) Appellant to pay deficit Court fee within a period of two months from the date of this order.