

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

5 FIRST APPEAL NO. 798 OF 2015

VILAS SOPAN LANDGE

VERSUS

SAYED USMAN SAYED JALAL AND ANOTHER

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Advocate for Appellants : Mr.Kale Mahesh P.

Advocate for Respondent No.1: Mr.D. M. Sande

Advocate for Respondent No.2 : Mr.Swapnil S.Rathi

CORAM : A. M. BADAR, J.

DATE : 14th December, 2015

ORAL ORDER:

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by aggrieved claimant on account of award of meager Compensation to him. The appeal is directed against the judgment and award in MACP No.14/2010 passed by the learned Motor Accident Claim Tribunal, Gangakhed on 22.06.2012 and 06.07.2012 respectively.

2. Respondent No.1 herein was original respondent no.1 before the Tribunal. Similarly, respondent no.2 Insurance Company herein was respondent No.2 before the learned Tribunal. For the sake of convenience, the parties shall be referred to in their original capacity.

3. Brief facts leading to the institution of the present appeal can be summarized thus:

i. Claim under section 166 of the Motor Vehicles Act, 1988 came to be filed by appellant/claimant praying for award of compensation of Rs.6 lakhs on account of injury suffered by him in the vehicular accident which had taken place on 08.03.2010. It is the case of claimant that while he was crossing Gangakhed to Palam road near Malewadi point, a Truck bearing MWP-1149 came from Parli Side which was being driven in rash and negligent manner gave dash from back side to him. The claimant felled down. Because of injuries suffered by him in the accident, he was admitted to SRTC Hospital, Ambejogai from 08.03.2010 to 14.08.2010. This accident resulted in amputation of his left leg. According to the claimant, he was working as a Salesman with Ritesh Krishi Kendra, Gangakhed and was earning Rs.4000/- per month. Because of amputation of his left leg, he lost 100% earning capacity. Thus, on various counts, the claim for compensation was made against respondents.

ii. Respondent no.1 owner of the truck contested the claim by filing written statement at Exh.21 contending that driver of the truck was prudent driver and he was

driving the truck in slow and moderate speed. Accident happened because of rash and negligence on the part of the claimants in crossing the road. The claimant himself had suddenly came in-front of the truck and accordingly accident happened.

iii. Respondent No.2 Insurance company opposed the claim by contending that driver of the offending truck was not holding valid and effective driving licence. There was no certificate of fitness. Accident did not happen because of fault of driver of the truck.

iv. On the basis of rival pleadings, the learned Tribunal framed issues and the parties went for trial.

v. The claimant examined himself in order to prove his claim. He relied on police papers as well as papers of his medical treatment. In rebuttal, respondents did not enter into witness box. The learned Tribunal, by the impugned judgment, has held that the claimant has proved that he sustained multiple injuries in the accident which was caused because of rash and negligent driving of the truck bearing Registration No. MWP-1149. The learned Tribunal, thereafter assessed compensation by holding that monthly income of claimant was Rs.3000/-. The

learned Tribunal then considered permanent disability at 80% and awarded compensation @ Rs.1500/- per percent of disability towards compensation on account of permanent disability suffered by the claimant. In addition, Rs. One lakh was awarded towards other non pecuniary and conventional damages. The claimant was thus awarded total compensation of Rs.2.20 lakhs inclusive of no fault liability.

4. Heard Shri Kale, learned counsel appearing for the claimant. As per his submission, the learned Tribunal erred in awarding compensation on account of permanent disability at Rs.1500/- per percent. He argued that no compensation for loss of future income was awarded to claimant. According to him, the award does not represent just and reasonable compensation to which the claimant was entitled because of amputation of his left leg.

5. As against this, learned counsel Shri Rathi, appearing for respondent No.2 justifies the award by submitting that as per recent trend, compensation was assessed @ Rs. 1500/- per percent of disability. In his submission, loss of future earning can at the most at 60% of the income. As per schedule to the Employees Compensation Act, 1923 amputation of a leg constitute

60% loss of earning capacity.

6. Having heard learned counsel appearing for the parties and after perusal of the record and proceedings, let us assess whether the claimant who has lost his left leg in the vehicular accident is adequately compensated or not. One will have to keep in mind the basic principle for assessment of compensation in the cases of vehicular accident. Wherever any amount is to be determined as compensation payable for any injury or casualty suffered during the accident, the object is to compensate so far as money can compensate because it is impossible to equate money with human suffering or persons deprivation. The term compensation signifies that which is given to recompense an equivalent rendered. Therefore it becomes the duty of the Tribunal to award just and reasonable compensation to the victims of the vehicular accident. It must be equal in value although not alike in kind.

7. In the case in hand, undisputedly, the claimant had lost his left leg in the accident caused because of rash and negligent driving of the offending truck bearing No. MWP-1149 owned by respondent No.1 and insured by respondent No.2. The claimant has placed reliance on disability certificate in Form B issued by

the Civil Hospital, Parbhni which reflects that because of amputation of his left leg, the claimant has suffered 80% permanent disability.

8. Evidence of the claimant shows that he was working as a Salesman with Ritesh Krishi Kendra. His evidence further shows that because of the disability suffered by him, he is unable to perform the said work. There is nothing in his cross examination to doubt this version of the claimant. On the contrary, from his cross examination, it is brought on record that he was doing job of bringing goods and then to sell them to customers. Cross examination of the claimant shows that his job was of selling seeds and fertilizers. It implies that the claimant was required to handle heavy goods such as sacks of fertilizers and seeds. His cross examination reveals that the claimant was required to bring these goods to the shop and then to sell them to the customers. Mobility, as such, was essential part of the job of claimant which is lost because of amputation of left leg. Hence it needs to be held that because of loss of his lower limb, the claimant is not in a position to work as a salesman

9. By now, it is well settled principle that

percentage of permanent disability incurred by the claimant cannot be equated with the loss of his future income. There are three steps for ascertainment of loss of earning capacity because of the permanent disablement suffered in the vehicular accident. Valuable guidance can be had on this aspect from the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar v. Ajay Kumar**, reported in **2011 (2) MHLJ 569**. Para 10 and 13 of this report read as under:

"10.Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and

functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%),

the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may. "

"13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

10. Thus, the Tribunal is required to consider effect

of permanent disability on loss of earning capacity of the victim of vehicular accident. In the case in hand, the learned Tribunal has erred in outrightly assessing compensation by multiplying percentage of permanent disability with an amount of Rs.1500/-. Such a method cannot be adopted when the disability to the lower limb rendered the claimant functionally disabled for the life. In the case in hand, the job of the claimant was to handle heavy goods for sale. He was selling fertilizer and seeds and because of this accident caused on account on rash and negligent driving of the truck, claimant's left leg was totally amputated. As such, his functional disability and the resultant loss of earning capacity needs to be taken at 100% i.e. Rs.3000/- per month which is his income assessed by the Tribunal. In my considered opinion, claimant will not be in a position to work as salesman and considering the nature of his job, he rendered unfit even to work as labourer. As such, his monthly loss of earning is assessed at Rs.3000/-. Because of 100% loss of earning capacity, the claimant is entitled for total compensation of Rs.5,04,000/- by applying multiplier of 14 as his age at the time he suffered disability was 42 years (i.e.3000x12x14).

11. The claimant has taken medical treatment at Government Hospital and he has placed some documentary evidence on record. Relying on the evidence, the learned Tribunal has awarded Rs.one lakh under pecuniary heads as well as non pecuniary heads such as pains and suffering, transportation, loss of income during hospitalization, expenses of hospitalization etc. That award needs no interference.

12. In the result, the appeal is allowed.

13. The impugned judgment and award of the learned tribunal is modified. Respondents are jointly as well as severally directed to pay Rs.6,04,000/- (Rupees six lakhs four thousand only)(Rs.5,04,000/- + Rs.1,00,000/-) to the claimant, inclusive of amount under no fault liability, along with interest @ 8% per annum as determined by the Tribunal from the date of filing of petition till realization of the amount.

14. Payment if any made under the Award shall be adjusted as on the date of payment.

15. No order as to costs.

(A. M. BADAR, J.)

JPC