

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 172 of 2014

Shri Khemchand Krishna Yevle,
Age : 35 years,
Occupation : Service & Agriculture,
R/o. Undirkhede, Taluka : Parola,
District : Jalgaon.

.. Appellant
(Original claimant)

versus

1. Shri Sanjay Barku Wani,
Age : Major,
Occupation : Driver,
R/o. Mukti,
Taluka & District : Dhule.
2. Shri Sushilkumar Shantilal Oswal,
Age : 45 years,
Occupation : Vehicle Owner,
R/o. Balapur, Post Fagne,
Taluka & District : Dhule.
3. The National Insurance Company Ltd.,
Through Divisional Manager,
299, Behind Kelkar Market,
Jalgaon.

.. Respondents
(Original respondents)

With

First Appeal No. 253 of 2014

Shri Bhikanrao Haibatrao Deshmukh,
Age : 68 years,
Occupation : Pensioner and Agriculture,
R/o. Undirkhede,
Taluka : Parola, District : Jalgaon.

.. Appellant
(Original claimant)

versus

1. Shri Sanjay Barku Wani,
Age : Major,
Occupation : Driver,
R/o. Mukti,
Taluka & District : Dhule.
 2. Shri Sushilkumar Shantilal Oswal,
Age : 45 years,
Occupation : Vehicle Owner,
R/o. Balapur, Post Fagne,
Taluka & District : Dhule.
 3. The National Insurance Company Ltd.,
Through Divisional Manager,
299, Behind Kelkar Market,
Jalgaon.
- .. Respondents
(Original respondents)

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Mr. M.M. Bhokarikar, Advocate, for appellants.

Mr. R.S. Shinde, Advocate, for respondent nos.1 and 2 (Absent).

Mr. S.P. Chapalgaonkar, Advocate, for respondent no.3.

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CORAM : A.M. BADAR, J.

DATE : 23RD NOVEMBER 2015

ORAL JUDGMENT :

1. By First Appeal No. 172 of 2014, injured claimant is challenging the judgment and award dated 30-11-2009, passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No. 475/1998, to the extent of rejecting his claim for

compensation on several counts and awarding less compensation to him for the personal injury and damage suffered to him in the vehicular accident.

In First Appeal No. 253 of 2014, injured claimant is challenging the judgment and award dated 30-11-2009, passed in M.A.C.P. No. 476/1998 whereby his claim for compensation on several counts was rejected and allegedly he is awarded less compensation for damage and personal injury suffered to him in the vehicular accident.

2. As both these appeals are arising out of the same accident, they are being decided by this common judgment. For the sake of convenience, parties in both these appeals shall be referred to in the original capacity.

3. Brief facts leading to institution of both these proceedings can be summarized thus :-

(a) First Appeal No. 172 of 2014 is arising out of M.A.C.P. No. 475/1998. The claimant therein alleged that he is in service of the Maharashtra State Road Transport Corporation [M.S.R.T.C.] as Conductor and was earning Rs. 3,000/- per month as salary. Apart from that, he was earning Rs. 2,500/- as income from agriculture.

(b) First Appeal No. 253 of 2014 is arising out M.A.C.P. No. 476/1998. According to the claimant therein, he used to earn income of Rs. 7,000/- to 8,000/- per month from agriculture and he is also a pensioner.

(c) Both claimants contended that on 5-5-1998, they were returning from Dhule to Undirkhede - their native place, after purchasing material for construction of their houses. They were travelling in motor vehicle bearing registration No. MH-18/B-7097 owned by respondent no.2, driven by respondent no.1 and insured with respondent no.3; along with their goods. The accident happened near village Karanji because of rash and negligent driving of the said motor vehicle by respondent no.1 - driver.

(d) According to claimant Khemchand Yeole (M.A.C.P. No. 475/1998), he suffered fracture injury to his left wrist apart from contusions to his waist and all limbs. According to claimant Bhikanrao Deshmukh in M.A.C.P. No. 476/1998, because of this accident, his right hand was fractured requiring implant of a rod. Both the claimants alleged that after first aid at Cottage Hospital, Parola, they took treatment as indoor patient at private hospitals. Claimant Khemchand (M.A.C.P. No. 475/1998) contended that he was hospitalized at the hospital of Dr. Gautam Shaha whereas, according to claimant Bhikanrao (M.A.C.P. No. 476/1998), he was hospitalized at the hospital of Dr. Narendra Sonawane. According to both claimants, they spent huge amount on their medical treatment. It was case of both the claimants that they are rendered permanent disabled because of injuries suffered in this vehicular accident causing loss of income as well as loss of future income to both of them.

(e) Claimant in First Appeal No. 172 of 2014, (M.A.C.P. No. 475/1998), namely Khemchand had led a claim of Rs. 1,25,000/- on all counts whereas, claimant in First Appeal No. 253 of 2014 (M.A.C.P.

No.476/1998), namely Bhikanrao had led a total claim of Rs. 1,00,000/- on various counts.

(f) By filing written statement at Exhibit 22, driver of the motor vehicle opposed the claim by denying each and every averment. He denied the fact that the accident happened because of his rash and negligent driving. Respondent no.2 - owner of vehicle in both these claim petitions remained absent. Both the claim petitions were opposed by respondent no.3 - Insurance Company by filing written statements at Exhibit 21. Respondent no.3 - Insurance Company alleged breach of terms and conditions of contract of insurance by contending that driver of the motor vehicle was not having valid and effective driving license at the time of the accident. The Insurance Company further denied each and every adverse averment and contended that claimants were travelling illegally in the vehicle as passengers and therefore Insurance Company is not liable to pay compensation to them.

4. Upon trial, the learned Member of the Motor Accident Claims Tribunal, Jalgaon, by the impugned judgments and awards came to the conclusion that the claimants in both these claim petitions have failed to prove loss of income as well as loss of future income. As such, in M.A.C.P. No. 475/1998, claimant therein namely Khemchand was awarded total compensation of Rs. 65,000/-. Under the head 'permanent disability', he was awarded Rs. 40,000/-; on account of pains and suffering, he was awarded Rs. 3,000/- and on account of pecuniary expenses for purchase of medicines and hospital charges, he was awarded Rs. 22,000/-. Claimant Bhikanrao in M.A.C.P. No. 476/1998 was awarded

compensation of Rs. 50,000/-, which is comprising of Rs. 30,000/- towards permanent disability, Rs. 5,000/- towards pains and suffering and Rs. 15,000/- towards purchase of medicines, hospital charges and diet. Interest at the rate of 7.5 % per annum was awarded on the amount of compensation so assessed.

5. Heard Mr. Bhokarikar, the learned Counsel appearing for appellants, at a great length of time. According to him, claimant in M.A.C.P. No. 475/1998 had suffered 40 % permanent disability because of injury suffered to his left wrist and this permanent disability is duly proved by examining Dr. Gautam Shah. According to him, injured Khemchand was 30 years old and he was serving as Conductor with M.S.R.T.C. As such, he was protected by virtue of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 [**For short, hereinafter referred to as “Act of 1995”**]. In view of provisions of Section 47 of the said Act, even after acquiring disability, his employer was not competent to reduce his salary and as such, evidence of claimant that his salary income is not reduced because of disability incurred by him, is of no excuse for denying loss of future income to him. Shri Bhokarikar, the learned Counsel further argued that the learned Tribunal has failed to consider agriculture income of injured Khemchand though 7/12 extract of the agricultural fields owned by his mother were placed on record.

6. By relying on judgments of the Hon'ble Apex Court in the case of *S. Manickam Vs. Metropolitan Transport Corporation Ltd.*, reported in *AIR 2013 SC 2629* and in the case of *S. Perumal Vs. K. Ambika & another*, reported in *2015 AIR SCW 1561*, Shri Bhokarikar, the learned

Counsel appearing for appellants, argued that the learned Tribunal ought to have granted separate compensation on account of loss of earning capacity as well as on account of permanent disability incurred by claimants. He pointed out that the learned Tribunal ought to have granted compensation for different heads, such as, pains and suffering, loss of amenities of life, shortened expectation of life, loss of earning as well as future earning, medical expenses and other special damages, in view of judgment of the Hon'ble Apex Court in the case of ***Rekha Jain Vs. National Insurance Co. Ltd.***, reported in ***AIR 2013 SC 3429***. Reliance was also placed on the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & another***, reported in ***2010 (0) BCI 256***, in order to buttress the contention that there should have been award for loss of future income by the claimants. Shri Bhokarikar, the learned Counsel further relied upon judgment of the Hon'ble Apex Court in the case of ***Puttamma and others Vs. K.L. Narayana Reddy & another***, reported in ***AIR 2014 SC 706***, to submit that even the Hon'ble Supreme Court has recommended that compensation for an injury claim must be at least Rs. 1,50,000/-. Therefore, in submission of Shri Bhokarikar, the learned Counsel, in both these claim petitions, the learned Tribunal erred in awarding less compensation by ignoring entitlement of claimants on various other heads of compensation.

7. None appeared for respondent nos.1 and 2 to argue the appeals.

8. Shri Chapalgaonkar, the learned Counsel appearing for respondent no.3 - Insurance Company has supported the impugned judgment and award by contending that loss of income as well as loss of

future income is not proved by claimants. He further submitted that both the claimants are adequately compensated for injuries suffered by them in the vehicular accident.

9. Principles of assessment of compensation to victims of vehicular accident, as could be gathered from rulings in the matter of *S. Manickam (supra)*, *S. Perumal (supra)*, *Rekha Jain (supra)* and *Raj Kumar (supra)*, relied upon by the learned Counsel for appellants, are to the effect that whenever any amount is to be determined as compensation for any injury or casualty suffered during the vehicular accident, the object is to compensate so far as money can be compensated because it is impossible to equate money with human suffering and deprivation. Money cannot bring back broken frame of the victim in the vehicular accident. By now, it is well settled that the term 'compensation' signifies that which is given to recompense - an equivalent rendered. Therefore, the compensation must be equal in value though not alike in kind. Therefore, provisions of the Motor Vehicles Act, 1988, mandates the Tribunal to award just and reasonable compensation irrespective of claim made by claimants therein. However, at the same time, it needs to be kept in mind that compensation cannot take place of bonanza or windfall profit. Award is required to be just. Thus, claimants cannot claim unjust enrichment. It is well settled that compensation for permanent disability and compensation for loss of earning capacity are two different heads under which claimant is entitled for compensation. At this juncture, it is apposite to refer the manner in which loss of future income is to be estimated in the case of injury suffered in the vehicular accident. In the matter of *Raj Kumar (supra)*, in para 5 of the judgment, the Hon'ble Apex Court has held thus :-

“6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability;

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi)

relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury / deprivation / disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.”

Bare reading of para 5 makes it clear that it is in cases of serious injury, when there is medical evidence corroborating the evidence of claimant, compensation for loss of future earning, award for future medical expenses, award for loss of amenities of life and loss for shortening of normal longevity can be made. Keeping in mind these principles, let us assess whether compensation awarded by the impugned awards is just and reasonable.

10. Claimant Khemchand (M.A.C.P. No. 475/1998) has pleaded that he had suffered fracture injury to his left wrist apart from contusions. Similar is his evidence. He stated that he was hospitalized for a period of

15 - 16 days and spent an amount of about Rs. 30,000/- on his medical expenses, stay and attendance. Dr. Gautam Shah examined by the claimant deposed that because of injury to his left wrist, claimant Khemchand suffered permanent disability to the extent of 80 %. Dr. Gautam Shah has also proved bills and medical expenses incurred by the claimant. His cross examination shows that disability assessed by him is restricted to the particular joint and not applicable to the whole body.

11. The injury suffered by claimant Khemchand as such is required to be kept in mind for examining whether he has suffered any loss of future income. Claimant Khemchand is undisputedly a Conductor working in the M.S.R.T.C. He pleaded his salary to be Rs. 3,000/- per month. He was examined in the year 2006 when, as seen from his cross examination, his salary was increased to Rs. 6,000/-. There is neither pleading nor proof on record to show that because of permanent disability suffered in the accident, claimant Khemchand is unable to perform work as Conductor and therefore because of provisions of the Act of 1995, he is continued by his employer on some other post with protection to his pay. In absence of such evidence, it cannot be said that future prospectus in the employment of the claimant was marred by injuries suffered by him in the accident. As his salary was not adversely affected, claimant Khemchand cannot be awarded any amount towards loss of future salary income in view of judgment of the Hon'ble Apex Court in the case of **Raj Kumar (supra)**, relied upon by Shri Bhokarika, the learned Counsel appearing for the appellant.

12. Evidence of claimant Khemchand is conspicuously silent as

to place of his employment. He is native of village Undirkhede but he is in employment of M.S.R.T.C. as Conductor. Naturally therefore he cannot remain at village Undirkhede. Best evidence which can be available only with the claimant is not forthcoming as to where claimant was working and in what manner he was in a position to supervise agricultural fields owned by his mother despite his employment as Conductor with M.S.R.T.C. Evidence of claimant Khemchand is conspicuously silent as to number of his brothers and who was actually cultivating the agricultural land in the name of his mother. It is seen from documents at Exhibit 52 and 53, that only 76 and 48 Are agricultural land was held by mother of claimant Khemchand. Considering the nature of duty of Khemchand, it cannot be said that he was in a position to personally supervise the agricultural fields at his native place Undirkhede while in service in M.S.R.T.C. as Conductor. Therefore the learned Tribunal has not committed any mistake in not awarding compensation on this count. However, it appears that claimant Khemchand was admitted as indoor patient at the hospital of Dr. Gautam Shah and his evidence further shows that he had taken rest for a month at his home. Hence, on account of loss of salary for one month, in addition to award of the Tribunal, claimant Khemchand is awarded an amount of Rs. 3,000/-.

13. It is seen that though claimant Khemchand has placed on record bills of medical expenses to the tune of more than Rs. 23,400/-, the learned Tribunal had awarded Rs. 22,000/- towards medical expenses to him. No separate amount was awarded towards attendance and conveyance. It is matter of common knowledge that after the accident, injured claimant or his relatives does not take care to preserve all medical

bills as well as documents showing other expenses incurred by them. Hence, on account of nutritious diet, expenses of conveyance as well as attendance and remaining amount of medical bills, the claimant is awarded compensation of Rs. 10,000/- in addition to the award of the Tribunal.

14. Neither evidence of claimant Khemchand nor evidence of his Dr. Gautam Shah shows that the claimant has suffered loss of amenities of life or loss of expectation of life merely because of fracture injury to his left wrist. As such, no amount can be awarded under this head to the claimant. Award of Rs. 40,000/- on account of permanent disability to claimant appears to be just and reasonable because there is general trend to award Rs. 1,000/- per percentage of disability incurred by injured claimants. Certificate of Civil Surgeon justifies this award. Similarly, Rs. 3,000/- for pains and suffering also seems to be reasonable considering the nature of injury. In the result, claimant Khemchand in First Appeal No. 172 of 2014 (M.A.C.P. No. 475/1998) is found to be entitled for total compensation of Rs. 78,000/- for damage and loss suffered by him in this accident.

15. So far as First Appeal No. 253 of 2014 (M.A.C.P. No. 476/1998) is concerned, injured claimant Bhikanrao was 60 years old pensioner doing agricultural work at the relevant time. The documents at Exhibits 51 and 52 i.e. revenue record shows that he and his family is holding 3.62 and 2.63 Hectares of land at village Undirkhede. Claimant Bhikanrao had also taken treatment as indoor patient at the hospital of Dr. Narendra Sonawane. Evidence of Dr. Sonawane shows that due to fracture of forearm of Bhikanrao, a rod was required to be implanted. Dr.

Sonawane further testifies that an expenditure of about Rs. 6,000/- will be required in future for operation for removing this implant.

16. Evidence of claimant Bhikanrao shows that he was cultivating his agricultural land by employing labourers. His evidence does not show that he was actually carrying on agricultural operation in his agricultural field. His cross examination reveals that even after injuries suffered in the accident, he is supervising the agricultural operations in his field. In the wake of this evidence, by no stretch of imagination, it can be held that claimant Bhikanrao had suffered any loss of future income because of injuries suffered in the accident. Similarly, his evidence read with medical evidence coming on record from the mouth of Dr. Sonawane does not entitle Bhikanrao for compensation on any other head except on account of future medical expenses to the tune of Rs. 6,000/- and on account of loss of income suffered due to injuries caused in the accident. Bhikanrao must have taken rest and he must be out of his occupation after fracture injury to his arm for some days. Hence, on account of loss of income, he is awarded an amount of Rs. 10,000/-. Therefore, in addition to award of Rs. 50,000/-, claimant Bhikanrao is entitled for additional amount of Rs. 16,000/-. Thus, total compensation payable to claimant Bhikanrao is assessed at Rs. 66,000/-.

17. Now, coming to the rate of interest awarded by the Tribunal to claimants, it needs to be noted that interest at the rate of 7.5 % per annum was awarded on the compensation assessed by the Tribunal. No doubt, rate of award of interest lies in the discretion of the Tribunal but that discretion has to be exercised judiciously considering various factors. In

the case of *Amresh Kumari Vs. Niranjana Lal Jagdish PD. Jain & others*, reported in 2015(4) SCC 433 and *Mohinder Kaur & others Vs. Hira Nand Sindhi (Ghoriwala) & another*, reported in 2015(4) SCC 434, the Hon'ble Apex Court has awarded 9 % interest on the amount of compensation. Hence, so far as rate of interest is concerned, the awards need to be modified.

18. So far as other aspects are concerned, they need not be traversed as findings in respect of negligence of driver as well as liability of Insurance Company to pay compensation became final and are not challenged by the concerned parties.

19. In the result, both the appeals are partly allowed with proportionate costs.

(a) So far as First Appeal No. 172 of 2014 is concerned, the impugned award dated 30-11-2009 is modified. The claimant in M.A.C.P. No. 475/1998 is awarded total compensation of Rs. 78,000/- which respondents do jointly as well as severally pay to the appellant (original claimant) with interest at the rate of 9 % per annum from the date of filing of the claim petition till its realization. Amount, if any already paid to the claimant, be adjusted as on the date of payment.

(b) So far as First Appeal No. 253 of 2014 is concerned, the impugned award dated 30-11-2009 is modified. The claimant in M.A.C.P. No. 476/1998 is awarded total compensation of Rs. 66,000/- which respondents do jointly as well as severally pay to the appellant (original

claimant) with interest at the rate of 9 % per annum from the date of filing of the claim petition till its realization. Amount, if any already paid to the claimant, be adjusted on the date of payment.

20. Appeals are accordingly disposed of.

(A.M. BADAR)
JUDGE

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