

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

**First Appeal No. 1306 of 2014**

Shaikh Rafiq s/o. Sk. Badsha,  
Age : 41 years,  
Occupation : Taxi Driver,  
at present Nil,  
R/o. Gaibisha Nagar, Badnapur,  
Taluka : Badnapur,  
District : Jalna.

.. Appellant  
(Original claimant)

**versus**

1. Abhay s/o. Phoolchandji Agarwal,  
Age : 44 years,  
Occupation : Business,  
R/o. Priya Darshani Colony,  
Sambhaji Nagar, Bhokardan Road,  
Jalna, Taluka & District : Jalna.
2. Mrs. Rajni w/o. Abhay Agarwal,  
Age : Major,  
Occupation : Business & Household,  
R/o. as above.
3. Bajaj Alliance General Insurance  
Company Ltd., Yerawada, Pune,  
Through its Branch Manager,  
Br. Office Adalat Road, Aurangabad.

.. Respondents  
(Original respondents)

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*Mr. Zia-Ul-Mustafa & Mr. S. Rahmatali Hamidali,  
Advocates, for the appellant.*

*Respondent nos.1 and 2 served (Absent).*

*Mr. S.G. Chapalgaonkar, Advocate, for respondent no.3.*

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**CORAM : A.M. BADAR, J.**

**DATE : 19TH NOVEMBER 2015**

**ORAL JUDGMENT :**

1. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for respondent no.3. Nobody for respondent nos.1 and 2 though served.

2. Admit. Heard finally with the consent of the learned Counsel for the parties represented through Counsel.

3. This is an appeal by injured claimant being dissatisfied with award of compensation of Rs. 50,000/- along with interest at the rate of 7.5 % per annum, passed by the learned Member of the Motor Accident Claims Tribunal, Jalna, vide judgment and award dated 11-3-2014, in M.A.C.P. No. 119/2012.

4. The facts in nutshell giving rise to the institution of present appeal are thus :-

(a) It was case of claimant that by working as Taxi Driver, he was earning income of Rs. 6,000/- per month. On 5-10-2009, after parking his taxi in the house of his employer, the claimant was returning by bicycle when a car bearing registration No. MH-21/V-2666 owned by respondent no.2, driven by respondent no.1 and insured with respondent no.3 - Insurance Company, gave him forcible dash from back side causing the accident. The claimant suffered fracture injury to his leg and was required

to take medical treatment at Civil Hospital, Jalna, as well as Giriraj Hospital, Jalna. According to the claimant, he suffered 20 % permanent disability and as such, is unable to drive the vehicle. With these averments, a claim of Rs. 5,00,000/- was lodged.

(b) Respondent nos.1 and 2 though served remained absent before the learned Tribunal. The claim was opposed by respondent no.3 - Insurance Company by filing written statement contending that the accident took place because of sole negligence of the claimant. Factum of insurance was admitted. However, age, income, occupation and percentage of disability was disputed.

(c) After recording evidence of claimant as well as that of his witnesses, Dr. Pratap Ghodke, Orthopedic Surgeon, and Dr. Yogesh Dhanawat, another Orthopedic Surgeon, the learned Tribunal by the impugned judgment and award was pleased to award total compensation of Rs. 50,000/- with interest at the rate of 7.5 % per annum to the claimant towards damages suffered by him in the vehicular accident.

5. Heard the learned Counsel for the appellant - claimant. By drawing my attention to evidence of Dr. Pratap Ghodke, Orthopedic Surgeon attached to Civil Hospital, Jalna, it was pointed out that version of this witness shows that efficiency of the claimant to drive a motor vehicle is adversely affected because of 20 % disability suffered by him due to fracture injury to his leg. According to the learned Counsel for the appellant, finding of the learned Tribunal, based on evidence of Dr. Yogesh Dhanawat, that as fracture injury is healed, there is no loss to future earning capacity of the claimant, is totally perverse. The learned Counsel

for the appellant further argued that 50 % loss of earning capacity ought to have been assessed by the learned Tribunal and by adding 50 % more towards future prospectus in life, by adopting multiplier method, compensation should have been assessed. In his submission, award for pains and sufferings and loss of amenities of life is totally inadequate. He further argued that nothing was granted for future medical treatment. In submission of the learned Counsel for the appellant, interest ought to have been awarded at the rate of 9 % per annum. The learned Counsel for the appellant submitted a chart prepared by him and contended that the claimant was entitled for, in fact, compensation amounting to Rs. 9,92,000/- and modestly the Tribunal ought to have awarded compensation of at least Rs. 5,38,400/- to him.

6. Per contra, the learned Counsel for respondent no.3 - Insurance Company supported the impugned judgment and award by contending that the same is based on evidence on record as well as principles enunciated by the Hon'ble Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & another**, reported in **2011(2) Mh.L.J. 569**.

7. Respondent nos.1 and 2 continued to remain absent before this Court as they were before the learned Tribunal.

8. With the assistance of the learned Counsel appearing for the parties, I have carefully perused record and proceedings including oral as well as documentary evidence on record.

9. As this appeal is restricted to the quantum of compensation awarded by the learned Tribunal, it is not necessary to discuss on the

finding regarding fault of the vehicle in causing the accident.

10. According to the learned Counsel appearing for the appellant, the Tribunal ought to have assessed compensation for personal injury caused to the injured as per the heads given by the Hon'ble Apex Court in the case of ***Sanjay Kumar Vs. Ashok Kumar***, reported in ***2014 AIR SCW 1236***. In that matter, Hon'ble Apex Court placed reliance in the case of ***Raj Kumar (supra)***. Para 5 from the judgment in the case of ***Raj Kumar (supra)*** can be quoted with advantage and reads 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. ”

11. Keeping in mind the heads on which compensation needs to be awarded in injury claim, let us examine whether the learned Tribunal erred in assessing compensation to the claimant. It hardly needs to point out that the Tribunal is enjoined with duty to award just and reasonable

compensation to the victims of the regular accident. However, in the guise of claim for compensation, fanciful claims cannot be entertained and compensation cannot take nature of bonanza.

12. At the outset, let us examine whether the learned Tribunal erred in not awarding any amount towards loss of future earning to the claimant. The learned Tribunal estimated monthly income of the claimant at Rs. 6,000/- as claimed by him without there being any documentary evidence or evidence of his employer. This aspect will have to be kept in mind. Nature of injuries suffered by the claimant will play a role in determining his loss of future income, if any. Evidence of Dr. Pratap Ghodke shows that the claimant had suffered fracture tibial Condyle right. Perusal of evidence of the claimant shows that he has only stated that had he not been disabled, his income would have been doubled in future. The claimant has adduced evidence in the year 2014. He suffered injury in the accident in the year 2009. Evidence of the claimant is conspicuously silent as to whether he is or he is not in a position to drive the vehicle as efficiently as he was doing earlier. The claimant has not stated that because of injuries suffered in the accident, he is unable to drive the vehicle with the same efficiency in which he was driving the same earlier. Thus his evidence does not show that his functional capacity is adversely affected by the injuries caused in the accident.

13. Dr. Yogesh Dhanawat had examined the claimant and subsequently treated him for fracture injury. His cross examination shows that fracture injury suffered by the claimant is completely healed. Dr. Pratap Ghodke had not treated the claimant. He had only examined the claimant on 4-1-2012 and assessed permanent disability to the tune of 20 %.

As such, material brought on record from his cross examination to the effect that the claimant can drive the vehicle but his efficiency has been affected to some extent cannot be construed to mean that the claimant has suffered loss of future income because of reduced efficiency in driving the vehicle. This is so because the claimant is not vouching the same. The learned Tribunal appears to have kept in mind ratio of the judgment of the Hon'ble Apex Court in the case of **Raj Kumar (supra)**, wherein it was held that assessment of compensation on the head of '*loss of future earnings*' depends upon effect and impact of such permanent disability on earning capacity of the claimant. The claimant claims to be in employment and as per his version, his salary is Rs. 6,000/- per month. The claimant has not examined his employer in order to show that because of injury suffered by him, his salary is reduced in any manner. When there is no adverse effect of the injury on earning capacity, then it is well settled that no compensation under head '*loss of future earning*' can be awarded. As such, finding on that count recorded by the learned Tribunal needs no interference.

14. Evidence of the claimant is conspicuously silent about loss of income to him because of injuries suffered in the accident. The claimant has not stated as to how many days he was required to be out of employment. Hence, the learned Tribunal with some guess work has awarded compensation for loss of income for three months at Rs. 18,000/-. There is no evidence on record to show that the claimant was out of employment for more than three months.

15. There is no evidence on record to show that the claimant will be required to take medical treatment in future. Rather though the claimant entered in the witness box in the year 2014 he failed to depose anything

about this aspect. The claimant has not even produced any record in the nature of bills and receipts of his medical expenses made by him even prior to filing of claim petition. As such, keeping in mind that the claimant had undergone some medical treatment, the learned Tribunal considered him to be entitled for compensation of Rs. 10,000/-. In this view of the matter, in absence of evidence, the claimant cannot claim any amount towards future medical treatment. Considering fracture injury to his leg, the learned Tribunal awarded compensation of Rs. 6,000/- towards pains and suffering and Rs. 5,000/- towards loss of amenities of life. Perusal of evidence of claimant does not show that his normal life is adversely affected in any manner because of injuries suffered by him. There is no statement in his evidence that he is unable to lead normal life and unable to carry out normal pursuits. As such, award on this count is also reasonable. In the result, no infirmity could be found in the amount of compensation awarded to the claimant. Same is just and reasonable as per evidence on record.

16. The learned Tribunal after assessing compensation payable to the claimant, came to the conclusion that the claimant is entitled for interest at the rate of 7.5 % per annum from the date of claim petition till realization. There are no reasonings on this count. In the case of *Amresh Kumari Vs. Niranjan 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 compensation assessed to the victims of the vehicular accident. Adopting same analogy, it needs to be held that the claimant is entitled to interest at the rate of 9 % per annum on the amount of compensation.

17. In the result, the appeal is partly allowed.

Amount of compensation assessed by the learned Member of the Tribunal is upheld. However, the award is modified to the extent of rate of interest and it is hereby directed that the claimant shall be entitled for interest at the rate of 9 % per annum on the amount of compensation, from the date of claim petition i.e. 10-7-2012 till realization of the entire amount. The amount already paid to the claimant by respondents shall be adjusted on the date of payment by respondents.

18. The Appeal is accordingly disposed of with no order as to costs.

**( A.M. BADAR )**  
**JUDGE**

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