

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 106 OF 2007

The Divisional Manager,
Oriental Insurance Company Ltd.,
Divisional Office, Phule Market Jalgaon,
Now, through Sr. Divisional Manager,
Oriental Insurance Company Ltd.,
Office at "Indraprakash"
Adalat Road, Aurangabad.

.. APPELLANT.

VERSUS

1] Ulhas Amrut Patil,
Age 49 years, Occ. Service (at present nil)
R/o. Ganapatinagar,
Plot No. 38, Jalgaon.

2] Sangramsing K. Yadav,
Age 47 years, Occ. Business,
R/o. Shenva, Tal. Shahapur,
Dist. Thane.

,,,RESPONDENTS.

Mr. S.M. Godsay, Advocate for the appellant
Mr. G.V. Wani, Advocate for respondents.

CORAM : A.M. BADAR, J.
DATE : 8th DECEMBER, 2015.

ORAL JUDGMENT :-

1] This is an appeal under Section 173 of the Motor Vehicles Act, 1988 by original respondent No.2 Insurance Company challenging the judgment and award passed by the learned MACT, Jalgaon in MACP No. 624 of 1999 on 18.7.2006. Respondent No.1 herein was the claimant and respondent No.2 herein was the original respondent No.1/owner of the offending vehicle. For the sake of convenience, the parties shall be referred

to in their original capacity.

2] Facts in nutshell giving rise to the present appeal are thus :-

[a] Claimant Ulhas Amrut Patil lodged claim for compensation of Rs 15 Lakhs on account of injuries suffered by him in a vehicular accident that took place on 1st May, 1998. According to the claimant, he was travelling by a scooter and was proceeding towards Jalgaon from Kedgaon. Near old Mehrun Road, a truck bearing Registration No. 18/D-7105 owned by respondent No.1 and insured with respondent No.2, came from the opposite direction in a rash and negligent manner and at great speed. That truck gave forcible dash to the scooter on which the claimant was travelling.

[b] According to the claimant, in this accident, he suffered several fracture injuries as well as injury to his brain and face. According to the claimant, at the time of accident in question, he was 42 years old and was serving with Raymond Mills Jalgaon and he was earning salary of Rs. 6,000/- per month. However, because of this accident, he is rendered permanently disabled and as such, has suffered loss of income.

[c] Respondent No.1/owner of the offending truck did not contest the petition. Respondent No.2/appellant insurance company opposed the claim by filing written statement at Exhibit 13. It denied each and every averment made by claimant. According to the Insurance Company, it is for the claimant to prove rash and negligent act on the part of driver of the

tanker in causing the accident. According to the insurance company, the claimant himself was driving his vehicle in a rash and negligent manner and, therefore, he is solely liable for causing the accident. The Insurance company, however, admitted that the truck/tanker bearing Registration Number MH-18/D-7105 was insured with it.

[d] On the basis of the rival pleadings issues were framed and parties were put to trial. In support of his claim, the claimant examined himself at Exhibit 26. He also adduced evidence of Dr. Dinesh Firke at Exhibit 47. In rebuttal, the respondents did not enter in the witness box. After hearing parties, by the impugned judgment and award the learned Tribunal came to the conclusion that the accident in question happened because of rash and negligent driving of the tanker bearing Registration No. MH-18/D-7105, owned by respondent No.1 and insured with respondent No.2. It is further held that because of the accident in question, the claimant has suffered 100% loss of income and accordingly compensation of Rs. 13 Lakhs on all counts came to be awarded in his favour. Respondents were directed jointly and severally to pay the compensation so assessed alongwith interest @ 6% p.a.

3] In this appeal challenging the quantum of compensation awarded by the Tribunal, Shri Godsay, learned counsel for the appellant Insurance Company argued that instead of net salary of the claimant assessed by the Tribunal, his Take Home Salary should have been considered after deduction of all allowances and perks as well as other statutory

deductions. Shri Godsay, learned counsel for appellant further argued that the learned Tribunal erred in coming to the conclusion that there is total loss of earning capacity of the claimant. According to him multiplier method cannot be adopted for assessing the loss of future income in injury claim.

4] As against this, Shri Wani, learned counsel appearing for the respondent No.1/respondent supported the impugned judgment & award of the Tribunal, by submitting that compensation so awarded by learned Tribunal represent just and reasonable compensation to the victim of the vehicular accident.

5] As the present appeal is limited to the quantum of compensation assessed by the learned Tribunal, there is no necessity to traverse to the facts and evidence in respect of the mode and manner of happening of the accident in question. The learned Tribunal has categorically held that the accident happened because of rash and negligent driving of the tanker and this finding has attained finality.

6] Now, let us examine, whether the learned Tribunal has correctly assessed the compensation and whether the compensation so assessed is just and reasonable compensation to which the injured victim is entitled. Evidence of the claimant Ulhas Patil shows that, he was working as a Clerk with Raymond Mills at Jalgaon at the time of the accident in question. While assessing the loss of future income, injuries and disability suffered by the claimant plays a major role. Let us examine as to what were the injuries

suffered by the claimant in the accident in question. It is evidence of the claimant that because of this accident, he sustained fracture injury to his right leg, left hand and blunt injury to his head. As per his version, his right leg was fractured at two places i.e. Thigh and Knee. His evidence further shows that his waist was also injured in the accident in question. He lost his 4 teeth as well as vision of left eye in the accident in question.

7] In support of his case, the claimant examined Dr. Dinesh Firke, at whose hospital he had taken treatment from 1st May, 1998 to 1st August, 1998. Evidence of Dr. Firke shows that the claimant has suffered multiple contusions and abrasions on his right thigh. The lower lip of the claimant was torn and there was contused lacerated wound over his left eyebrow. Dr. Firke deposed that the claimant was having fracture of shaft femur with fracture of patella with fracture of left radius, and dislocation of wrist joint. Dr. Firke further deposed that claimant had suffered head injury.

8] It is in the evidence of claimant that after taking treatment at the hospital of Dr. Dinesh Firke, he had consulted Dr. Sudhir Kothari, M.D. Medicine, DN Neurology and Neuro-physician, Pune. The claimant has placed on record letter of Dr. Sudhir Kothari on record. This letter Exh.34 addressed to Dr. Chaudhari, shows that claimant has suffered un-steadiness towards right side and stiffness of the right side and, therefore, he could not shave or write properly. It is further made clear that the claimant had mild impairment of memory. Speech of the claimant was found to be slightly slow and his responses were also slow. Dr. Kothari had concluded that the

claimant has old head injury with residual brain damage and spasticity.

9] Now, let us examine, what is the result of these injuries on occupation of the claimant. The claimant has placed on record Disability Certificate in Form B, at Exhibit 35. This Certificate issued by the Civil Surgeon, Jalgaon shows that the claimant suffered 60% permanent disability because of injuries suffered by him in the accident in question.

10] It is well settled that all permanent disabilities do not cause loss of earning capacity. The Tribunal is required to assess and examine what is the result of permanent disability on income of the victim in order to assess the loss of future income. In the case in hand, evidence of the claimant shows that because of injuries suffered by him in the accident in question, he was required to resign from his job with Raymond Mills, Jalgaon. The claimant has placed on record, a Certificate dated 5th May, 2003 issued by Raymond Mills Ltd, certifying that he has resigned from his job w.e.f. 28.4.2003 due to his health problem as per the advice of the Civil Surgeon. This makes it clear that because of the accident in question, the claimant is unable to work for earning his livelihood. Therefore, the learned Tribunal was perfectly correct in holding that the claimant suffered 100% loss of earning capacity. The certificate at Exhibit 30 issued by Raymond Mills Ltd. shows that the claimant was earning salary of Rs.7968.20 p.m. The learned Tribunal has effected statutory deduction from this salary which the claimant used to earn. By deducting the amount of profession tax of Rs.

175/- salary income of the claimant was considered at Rs. 7,800/- p.m. Submissions of Mr. Godsay, learned counsel for appellant that other allowances should also be deducted from the salary of the claimant are noted only for rejection in view of the judgment of this Court in the matter of *National Insurance Company Ltd. Vs. Vaishali Deore, 2013(1) Mh.L.J. 4116*, wherein by relying upon the judgment of the Supreme Court in the matter of *National Insurance Company Ltd. Vs. Indira Srivastav and others*, it is held that amounts which were paid by way of perks for benefit of the family cannot be deducted from the salary of the victim. In the said judgment, it is clarified that only amount of income tax and other statutory deductions are required to be deducted from the salary of the victim of vehicular accident.

11] Considering the future prospects of advancement in life career of the claimant, the Tribunal has modestly assessed the income of Rs. 10,000/-. Such modest estimation by the Tribunal considering the future possibility of career advancement cannot be termed as erroneous or perverse. The learned Tribunal has applied multiplier of 10 by considering the age of the claimant as 44 years. Even as per the law laid down by the Supreme Court in the matter of *Sarla Varma vs. Delhi Transport Corporation 2009(5) Mh.L.J. 775*, it cannot be said that choice of multiplier of 10 is at a higher side. As the claimant has suffered 100% loss of earning capacity, the multiplier method is rightly adopted for assessing loss of future income. Perusal of the impugned award, as such, shows that the

learned Tribunal has modestly awarded an amount of Rs. 10 Lakhs towards loss of future earning to the claimant. In addition, the learned Tribunal has directed reimbursement of pecuniary damages suffered by the claimant. Considering the quantum of compensation awarded by the learned Tribunal, it cannot be said to be unreasonable or exorbitant. As such, the appeal is devoid of any substance and, therefore, the same is dismissed with costs.

[A.M. BADAR, J]

grt/-