

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 679 OF 2016

Yogesh s/o. Chandrakant Joshi,
Age: 40 years, Occ. Service,
R/o. Chapkhana Lane, Dhondipura,
Beed, Tq. & Dist. Beed. ... Appellant

Vs.

1. Kavita w/o. Sanjay Veer,
Age: Major, Occ. Business,
R/o. H.No. 1-6-12, Behind
Anand Hospital,
Jalna Road, Beed.
2. Vivek w/o. Raghunath Veer,
Age: Major, Occ. Driver,
R/o. As above.
3. TATA AIG Insurance Company Limited,
Through Branch Office, 2-A, The Orion,
IInd Floor, Kotirgoan, Road,
Pune – 411 001. ... Respondents

Mr. Deshmukh Mohit R., Advocate for the appellant.
Mr. S.S. Patil, Advocate for the respondents.

CORAM : P.R. BORA, J.
DATE : 30-09-2016.

ORAL JUDGMENT :

1. Appellant has filed the present appeal seeking enhancement in the amount of compensation awarded to him by the Motor Accident Claims Tribunal at Beed in M.A.C.P. No. 252 of 2011 filed by him before the said tribunal decided on 14/09/2015.

2. The appellant was injured in a vehicular accident and suffered injuries to his left leg as well as left hand and because of the injuries so caused to him also incurred some sort of disablement which has been certified to the extent of 15% by the treating surgeon. Appellant is a government servant and was 36 years old on the date of accident. At the relevant period he was drawing salary to the tune of Rs. 19,377/- per month. The appellant had claimed the compensation of Rs. 10 Lakhs from the driver, owner and insurer of the offending vehicle. In order to substantiate the claim so raised by him. Appellant himself deposed before the tribunal and has also examined Dr. Pramod Shinde, who has issued a disability certificate certifying the permanent disablement suffered by him. Appellant had also placed on record the necessary medical bills evidencing the expenses incurred by him on his treatment. The appellant had also examined an employee of his office so as to bring on record that he was required to take the leave for period of about two months in the period from 02/10/2010 to 30/11/2010. The Appellant had also examined one Madhukar, as his witness to whom the appellant has allegedly employed to drive his car which as stated by the appellant he was required to purchase for attending his office. Respondents though have filed written statements resisting the claim, no evidence was adduced on behalf of any of the respondents. Considering the evidence on record the learned tribunal has awarded total

compensation of Rs. 1,23,696/- under different heads. Dissatisfied by the amount of compensation so awarded by the tribunal the appellant has filed the present appeal.

3. Mr. Deshmukh, the learned counsel appearing for the appellant submitted that, the tribunal has failed in considering that, the appellant was constrained to obtain leave in the period between 02/10/2010 till 30/11/2010 for the reason that he was to be hospitalised in the relevant period and was advised to take full bed rest during the said period. The learned counsel submitted that, the said fact has been duly proved by the appellant by examining an employee from his office namely Shivaji Sonawane. The learned counsel further submitted that, the appellant also has brought on record his monthly salary and has accordingly prayed for the compensation under the head of actual loss of income suffered because of the said leave but the tribunal has not awarded any compensation under the said head. The learned counsel submitted that, the appellant is entitled to be awarded a sum equal to his two months salary so as to compensate the period of leave which he was compelled to obtain.

4. The learned counsel further submitted that, it was the specific contention of appellant before the tribunal that his office is at the distance of about 15 kms from the place of his residence at Beed. Learned counsel submitted that it was also brought on

record by the appellant that the appellant has become incapable of riding a motor cycle or drive any other vehicle and as such he was required to purchase a car and was further required to employ a driver on the said car. The learned counsel submitted that the appellant has also examined a driver employed by him before the tribunal and it has come in the evidence of the said driver that the appellant is paying him monthly salary of Rs.5,000/-. Learned counsel submitted that, while determining the amount of compensation the tribunal has erred in not granting any amount towards the said expenses which are inevitable having regard to the disability incurred by the appellant.

5. The learned counsel further submitted that, the tribunal has awarded inadequate amount towards the other heads and has failed in considering the fact that the permanent disablement incurred by the appellant will continue for rest of his life resulting in depriving the appellant from enjoying amenities of life as a normal human being.

6. The learned counsel has placed reliance on two judgments of the Hon'ble Apex Court one in the case of **S. Manickam Vs. Metropolitan Transport Corp. Ltd.** reported in **AIR 2013 SC P.2629** and another in the case of **Subulaxmi Vs. M.D., Tamil Nadu State Road Corporation and Anr.** reported in **2012 AIR SC SCW P.5945**. The learned counsel submitted that,

the apex court has distinguished that the permanent disability and loss of earning capacity are the different heads of compensation and the tribunals are required to consider the entitlement of the claimant under both the heads. On all these counts the learned counsel prayed for adequate enhancement in the amount of compensation so awarded by the tribunal.

7. Mr. Swapnil Patil, learned counsel appearing for the respondent no.3 i.e. insurance company has supported the impugned judgment and award. The learned counsel submitted that, the tribunal has rightly considered evidence on record and the compensation awarded by the tribunal is just and adequate and need no enhancement. The learned counsel submitted that, the evidence on record show that the permanent disability incurred by the present appellant has not resulted in causing any loss of income to the appellant. Learned counsel submitted that, it has come on record that neither the salary income of the appellant has been decreased nor his chances of getting any promotion are marred by the injuries and the permanent disability incurred by him.

8. Learned counsel further submitted that, the appellant in his cross-examination has admitted that, it is mandatory for the government employees to reside at the place of work. The learned counsel submitted that, the appellant has further admitted that he has not obtained the permission from his superior officer for not

residing at the work place but to reside at the district place at Beed. Referring to the admissions so given by the appellant, the learned counsel submitted that, there is no justification for the claim made by the appellant towards the inevitable expenses for attending his duties. The Learned counsel further submitted that, under all the other heads also the tribunal has awarded reasonable sums, just and fair in the circumstances of the case, and, as such, no interference is required in the impugned judgment of award. The learned counsel, therefore, prayed for dismissal of the appeal.

9. Learned counsel further submitted that, since the period of leave was duly sanctioned by the office of the appellant and the salary of the said period has also been paid to the appellant. The appellant is not entitled to claim any amount towards the salary of the said period.

10. I have carefully considered the submissions advanced by the learned counsel appearing for the parties. I have perused the impugned judgment and the evidence on record. I will prefer to deal with the issues raised by the appellant as they were raised in the same chronology.

11. The first ground on which the appellant has sought enhancement in the amount of compensation is that the tribunal has not awarded to him the salary of the period of two months in which he was compelled to take leave because of the injuries

caused to him in the alleged accident. On perusal of the impugned judgment, it is revealed that the tribunal has not accepted the said request of the appellant observing that, the appellant has received the salary of the said period from his employer and the said period has been treated as medical leave of the appellant. The reason which has been assigned by the tribunal for not awarding the compensation under the said head apparently is unacceptable. Had the appellant not met with an accident he perhaps would not have availed the period of medical leave and the said leaves would have remained at his credit to be exhausted in future in case of any such contingency. In the circumstance, on the said count the compensation under that head could not have been denied by the tribunal. As has come on record the appellant was receiving monthly salary to the tune of Rs. 19,377/-per month. The appellant, thus, deserves to be awarded a sum, of Rs. 38,754/- by way of the salary of the period of two months and the compensation amount needs to be enhanced to that extent.

12. The second point urged by the appellant is in respect of the inevitable expenses which have not been awarded by the tribunal. It has come on record that, the appellant was required to purchase a car and also required to employ a driver on the said car. The said driver has been examined by the appellant and through the evidence of said driver it has come on record that the appellant is paying him a salary of Rs.5,000/- per month. In the cross-

examination the appellant has admitted that he is expected to reside at the place of work and he has further admitted he has not obtained any permission for not residing at the work place. However, the question is whether the claim of the appellant in this regard can be outrightly rejected?

13. Since the appellant is residing not at the work place but at some other place, he as of right cannot claim the conveyance allowance. However, considering the fact that the appellant has now become incapable of riding a motor cycle or drive any other vehicle it cannot be disputed that for every travel long or short, he will have to take some assistance and he may not be able to independently travel as a normal person. In the circumstances, it appears to me that it would be unjust not to award any compensation to the appellant towards the aforesaid aspect. Though, it may not be possible to accept the request of the appellant to award compensation under the said head by considering the evidence that he has to pay salary of Rs. 5,000/- to a driver employed by him, some reasonable sum needs to be awarded so that the aforesaid aspect is taken care of. It appears to me that if a sum of Rs. 1,00,000 is awarded to the appellant towards the same that will meet the ends of justice.

14. Towards pain suffering the tribunal has awarded Rs. 25,000/- and on account of loss of amenities the tribunal has

awarded a sum of Rs. 15,000/-. The Tribunal has also awarded Rs. 10,000/- for loss of beauty and Rs. 15,000/- towards the future medical expenses.

15. Having regard to the fact that, the appellant met with an accident at a young age of 36 and because of the injuries caused to him in the said accident has sustained such a nature of permanent disablement that he has become incapable of driving any vehicle and he may not be able to walk freely and travel conveniently, the compensation as awarded by the tribunal apparently appears unjust and inadequate.

16. The Hon'ble Apex Court in the case of **S. Manickam cited (Supra)** has laid down that, the adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would enjoy but for the injuries and his ability to earn has as much as he used to earn or could have earned. The Hon'ble Apex Court has further held that the compensation under the head 'permanent disability' cannot be devied on the ground that the substantial amount had been fixed under the head 'loss of earning and loss of earning capacity'. The Hon'ble Apex Court has also observed that while computing compensation approach of the tribunal or a court has to be broad based and sometimes it would

involve some guess work and there cannot be precise formula to determine the quantum of compensation.

17. In another judgment in the case of **Subulaxmi cited** (Supra) the Hon'ble Apex Court has observed that the compensation can be granted towards permanent disability as well as all future earnings, because one head relates impairment of person's capacity and the other relates to the severe pain, suffering and loss of enjoyment of life by the person himself. The Hon'ble Apex Court has further noted that, the efforts should always be made to award adequate compensation not only for the physical injury and treatment but also for the pain, suffering and trauma caused due to accident, loss of earning and victims inability to lead a normal life and enjoy amenities which he was enjoying but for the disability caused due to the accident.

18. In view of the principles and the guidelines as laid down by the Hon'ble Apex Court, it appears to me that the compensation awarded to the appellant under the head of pain, suffering and for loss of amenities in life is inadequate. Having regard to the facts involved in the present case, elaborated by me herein-before, I deem it appropriate to enhance the compensation under the aforesaid heads to Rs. 1,50,000/- in aggregate. The appellant is, thus, found entitled to the total compensation of Rs. 3,47,450/- (Rupees Three Lakh Forty Seven Thousand Four Hundred and Fifty).

In the facts and circumstances of the case and from the evidence on record, it appears to me that, this will be just and fair compensation payable to the appellant. The appeal, thus, deserves to be allowed to the aforesaid extent and the amount of compensation needs to be enhanced to the aforesaid extent.

(P.R. BORA)
JUDGE

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