

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 601 OF 2004

Mohd. Saleem s/o Mohd. Ibrahim
aged 45 years, Occupation business
At present NIL, Resident of Manwat
now Resident of Majalgaon,
Taluka Majalgaon, District Beed.

... Appellant
(Original Claimant)

Versus

1. Manmat s/o Devidasrao Bokhare
aged 32 years, Occupation Driver,
Resident of Kolha, Taluka Sailu,
District Parbhani.
2. Pralhad s/o Laxman Bhavar,
aged 35 years, Occupation business,
Resident of Hatta, Taluka Basmat,
District Parbhani.
3. The New India Assurance Co. Ltd.,
Yeshodeep Building,
Parbhani.

... Respondents
(Original Respondents)

.....
Advocate for Appellant : Mrs. A N Ansari
Advocate for Respondent No.3 : Mr. A.B Gatne
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CORAM : V. K. JADHAV, J.
DATED : 25th APRIL, 2016

JUDGMENT:-

1. Being aggrieved by the judgment and award dated 17.4.2001 passed by learned Ex-Officio Member, M.A.C.T. Parbhani, in M.A.C.P. No. 308 of 1997, the original claimant has preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as under:-

On 2.11.1997 the claimant had gone to Parbhani in connection with his hotel business and after doing some marketing, he started returning to his village Manwat. He had gone to Parbhani S.T. bus stand pick up a bus for Manwat. At that time, respondent No.1 was present there and he was also proceeding towards Manwat by his jeep. The claimant boarded in the said jeep bearing registration No. MH-22-A-9705. On way the respondent No.1 driven the said jeep in rash and negligent manner. Consequently, said jeep gave a dash to one tempo which was coming from opposite directions. As a result of which, claimant had sustained multiple injuries all over his body and particularly his right leg, head etc. He was treated in various hospitals. However, the injuries sustained by him resulted into amputation of his right leg. The claimant was aged 40 years at the time of accident. He was running hotel near S.T. Stand Majalgaon, District Beed. Respondent No. 1 and 2 i.e. driver and owner of the jeep respectively, failed to file their written statements and therefore, the claim petition ordered to be proceeded without their written statements. Respondent insurer has strongly resisted the claim petition by filing written statement. It is contended that the accident took place due to rash and negligent driving of the tempo driver and that the claimant should be put to strict proof that he had spent huge

amount on the treatment and there is loss of complete income. Learned Member, M.A.C.T. Parbhani by impugned judgment and award dated 17.4.2001, partly allowed the claim petition and directed the respondents to pay jointly and severally an amount of Rs.1,51,200/- as compensation alongwith interest at the rate of 9% p.a. from the date of application till realization of the amount. Being aggrieved to the extent of quantum, the original claimant has preferred this appeal.

3. Learned counsel for the appellant-original claimant submits that claimant was running a hotel near S.T. Stand Majalgaon, Tq. Majalgaon, District Beed and he was earning Rs.3500/- to 4000/- per month. He was holding licence to run the said hotel, which is produced on record and marked as Exh.41. After the accident, since right leg of the claimant has been amputated, he had to close his hotel business. The Tribunal has considered the loss of income for two years only by considering monthly income of the claimant to the tune of Rs.2000/- p.m. Learned counsel submits that, further, the Tribunal erroneously awarded compensation by considering future loss of income at the rate of Rs.300/- per month with observation that the claimant could run his hotel by getting assistance and in that way there could be loss of payment of salary of the said assistant/waiter in the hotel. The Tribunal has committed error in considering income

of the claimant from his hotel business to the tune of Rs.2000/- and further erroneously awarded the compensation for two years only and thereafter, by different rate, considering the loss of income of Rs.300/- p.m. Even though the claimant was required to attend various hospitals for his treatment, the Tribunal has not awarded any compensation towards medical expenses. Learned counsel submits that the Tribunal ought to have considered income of the claimant from his hotel business to the tune of Rs.3500/- to Rs.4000/- p.m. Learned counsel submits that the Tribunal has erroneously applied multiplier 12 instead of 15. Considering the age of the claimant, relevant multiplier would be 15 instead of 12. Learned counsel submits that the Tribunal has not considered that on account of amputation of right leg, claimant is not able to move from one place to another and he cannot sit at one place for more than 10 to 15 minutes.

4. Learned counsel for the respondent-insurer submits that in absence of any income proof, the Tribunal has rightly considered the loss of income for two years at the rate of Rs.2000/- p.m. The multiplier applied by the Tribunal as 12 is relevant multiplier. Learned counsel submits that the Tribunal has rightly observed that with the help of assistant/waiter, claimant can run his hotel and there can be loss of income in strict sense to the extent of salary which is

required to be paid to the said employee. Learned counsel submit that the Tribunal has awarded compensation under non pecuniary heads. Learned counsel submits that the Tribunal has awarded just and reasonable compensation and no interference is required in the impugned judgment and award.

5. The claimant has deposed that prior to the accident, he was running a hotel near S.T. stand Majalgaon, which is a Taluka place and he was earning Rs.3500/- to Rs.4000/- per month prior to his accident. In order to substantiate this contention, the claimant has produced shop licence issued by the competent authority in his name and the same is marked at Exh.41. On careful perusal of the same, it appears that the claimant was running a mess and as per the address given in the said licence, he was running the said hotel/mess near S.T. stand Majalgaon which is a Taluka place. However, in absence of any income proof, I do not find any fault in the impugned judgment and award considering the income of claimant from his hotel business at Rs.2000/- p.m.

6. However, I do not find any justification in the impugned judgment and award considering the loss of income from the said hotel business for the initial period of two years only. The claimant has examined witness No.2 – Medical Officer Dr. Balasaheb Masare.

He has deposed that there is permanent disability to the extent of 89% and there is amputation of right leg above the knee. He has issued certificate in Form Comp. B and same is marked at Exh.53. He has further deposed that due to amputation of right leg, the claimant can sit continuously only for 15 to 20 minutes and he cannot do hard labour work. It is not disputed that the accident had taken place on account of rash and negligent driving of driver of the jeep bearing registration No. MH-22-A-9705 alone. The respondent-insurer has not preferred any appeal against the judgment and award, nor filed any cross objection. In the light of the above opinion expressed by the expert, the Tribunal ought to have considered total loss in future income and instead of that the Tribunal has erroneously considered the loss of income to the extent of payment of salary to the said assistant/waiter.

7. In view of this, if income of the claimant is considered at Rs.2000/- per month and if future loss of income is considered to that extent, the yearly loss in future income comes to Rs.24,000/-. The Tribunal has erroneously applied the multiplier 12 instead of 15. If yearly income is worked out as mentioned herein before and the relevant multiplier 15 is applied, the total loss of future income comes to Rs.3,60,000/-. Thus, the claimant is entitled for compensation towards future income of Rs.3,60,000/-.

8. It also appears from the impugned judgment and award that the Tribunal has awarded meager amount under non pecuniary heads, such as pains and sufferings etc. The Tribunal has also refused to award compensation for medical expenses as claimed, since the claimant has failed to prove the bills though produced on record. The claimant is not in a position to move from one place to another place on account of amputation of his right leg up to knee level. It would be improper to expect from him to prove the medical bills and other documents in support of medical expenses incurred by him. Even though there is amputation of right leg up to knee level, the Tribunal has awarded only Rs.10,000/- as compensation for pains and sufferings. The Tribunal should have awarded Rs.25,000/- for pains and suffering and Rs.50,000/- for medical expenses.

9. Thus, the break up of compensation under various heads which can be broadly categorized is as under:-

I)	Loss of future income	Rs.3,60,000.00
II)	Pains and sufferings	Rs. 25,000.00
III)	Medical Expenses	Rs. 50,000.00
IV)	Loss of enjoyment of life	Rs. 25,000.00

	Total	Rs.4,60,000.00
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(Rupees four lacs and sixty thousand only)

10. In the light of above, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 17.4.2001 passed by learned M.A.C.T. Parbhani in M.A.C.P. No. 308 of 1997 is hereby modified in the following manner:-

“The respondent Nos. 1 to 3 jointly and severally pay an amount of Rs.4,60,000=00 (Rupees Four lacs sixty thousand) as compensation with interest @ 9% p.a. from the date of filing of petition i.e. from 29.11.1997 till realization of the entire amount”.
- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up in tune with the modification, as aforesaid.
- VI. The appeal is accordingly disposed.
- VII. Needless to say that the amount, if paid or deposited, is to be adjusted.

(V. K. JADHAV, J.)