

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 456 OF 1998

Vasant Bhagwant Pandav,
Age 68 years, Occu: At present Nil,
R/o Paithan, Taluka Paithan,
District Aurangabad.

...Appellant

Versus

1. Maharashtra State Road Transport Corporation, (The Divisional Controller, Sarjepura, Ahmednagar).
2. Kisan Vishwanath Shelke,
Age Major, Occu: Driver,
R/o Paithan, District Aurangabad.
3. Ankush Aaba Jagdale,
Age Major, R/o Karhade,
Taluka Shirur,
District Pune. (Deleted)
4. M/s. P. G. Roadways,
Kundan, 180/1, Timber Market,
M.P.Peth, Pune-2.
5. The United India Insurance Co. Ltd.,
Kisan Kranti Building,
Market Yard, Ahmednagar.

...Respondents

.....
Mr. M. D. Joshi, Advocate for the appellants
Mr. M. K. Goyanka, Advocate for respondent No.1
Mr. Mohit R. Deshmukh h/f Mr. S. G. Chapalgaonkar, Advocate for
respondent No.5
.....

CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2016

ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.

2. Being aggrieved by the common judgment and order passed by the learned Member, M.A.C.T., Ahmednagar dated 30.11.1996 in M.A.C. Application Nos. 172 and 173 of 1990, the original claimant in M.A.C. Application No. 173 of 1990 has preferred this appeal to the extent of quantum of compensation.

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

i) On 22.11.1989, claimant No.1-Vasant along with his daughter deceased Sunita was proceeding from Paithan to Pune in S.T. Bus bearing registration No. MCA 7656. Respondent No.2 was driving the said S.T. Bus at the relevant time. On way, within the limits of village Kamargaon on Nagar-Pune road, one truck bearing registration No. MWQ-9601 came from opposite side and gave dash to the S.T. Bus. Said truck was being driven in rash and negligent manner in excessive speed by original respondent No.3 at the time of accident. In consequence of which, claimant No.1 Vasant was seriously injured and suffered permanent disablement. The claimant, therefore, had filed M.A.C. Application No. 173 of 1990 for grant of compensation on account of personal injuries sustained by him in the accident.

ii) Being aggrieved by the quantum, in respect of injury claim, the

original claimant has preferred this first appeal No. 456 of 1998.

4. Learned counsel for the appellant submits that the claimant was performing Kirtan in various villages prior to the accident and was getting Rs.1000/1500 per Kirtan. The claimant was renowned Kirtankar and secured honour of Hari Bakta Parayan issued by the Government. The claimant used to have 10/15 Kirtans in a month and he was earning substantial sum by performing Kirtans. Learned counsel submits that the claimant is also having agricultural land and prior to the accident he was cultivating the same. The Tribunal has not considered his income from performing of Kirtans well as from agricultural source. The medical certificate Exh.40 is not considered by the Tribunal in its proper perspectives. Learned counsel submits that even though percentage of disablement is not mentioned in said certificate Exh.40, considering the nature of disablement and since claimant was performing Kirtan by visiting various villages and he used to perform it in standing position for 2/3 hours in a day, the Tribunal should have considered the loss of earning capacity to the extent of 50%.

5. Learned counsel for the respondent insurer submits that there is no evidence of income from the source of performing Kirtan. According to the claimant himself, he was performing Kirtan for 15

days in a month and during remaining period of the month, he was looking after his agricultural lands. Learned counsel submits that even considering the nature of disablement, there is no loss in the income as such. So far as the agricultural income is concerned, the lands are owned and possessed jointly by claimant, his major sons and wife. Even in absence of claimant, his major son is capable to cultivate the lands. The tribunal has considered the same and accordingly awarded the loss of future earning to the extent of Rs.50,000/-. The tribunal has awarded compensation for medical expenses, pains and sufferings, special diet etc. Learned counsel submits that the Tribunal has awarded just and reasonable compensation and no interference is required.

In order to substantiate his submissions, learned counsel place reliance on the judgment in the case of ***Ponnumany @ Krishnan and Anr. vs. V.A. Mohanan and others, reported in AIR 2008 SC 2014.***

6. I have also heard learned counsel appearing for the M.S.R.T.C.

7. The claimant has examined himself on oath and deposed

before the Tribunal that he was performing Kirtan in various villages in the State of Maharashtra prior to the accident. He was getting Rs.1000/- to 1200/- per Kirtan in the form of cash and/or kind. He has also secured the honour of "Hari Bhakta Parayan". So far as agricultural income is concerned, he is having 23 acres of land at Paithan, 8 acres of land at village Tambha Rajuri, Taluka Patoda, District Beed. Furthermore, he also own and possess 5 acres of land at Rakshashbhuvan in Patoda Taluka in Beed district. The claimant has produced on record 7x12 extract in support of his contention. According to him, he was personally looking after the aforesaid lands prior to the accident and he was getting cash crops in the said lands. Leaned counsel for the respondent insurer has rightly pointed out that there cannot be any loss in the agriculture income since major son of the claimant is capable of cultivating the land. However, as per the claimant's contention, he was performing Kirtan for 15 days in a month, and remaining 15 days, he was supervising the aforesaid lands situated at various places. In view of this, the Tribunal ought to have considered his income from the source of performing Kirtan as well as from agricultural income. It is true that there cannot be complete loss in the agriculture income, however, the loss on account of skilled, experienced supervision should have been considered by the Tribunal. The claimant may not visit his land and there may not be actual supervision in the field, however, he can

advise his son in cultivating those lands situated at various places.

8. So far as disablement sustained by the claimant is concerned, medical certificate is produced before the Tribunal and the same is marked at Exh.40. It appears from the contents of the said certificate that after follow up examination carried out on 07.04.1990, the concerned Medical Officer found tenderness on right hip with restriction & painful movement of right hip of the claimant. It is further observed in the certificate that it signals the onset of many things as detailed in the certificate. It is also observed that the interval between the the time of dislocation and the reduction has been more in the case of claimant. It is also stated in the said certificate that this complication leads to permanent disablement as there is marked pain on weight bearing on the injured leg, the movement of the joints are restricted which incapacitates the person from squatting, sitting cross legged, prolonged standing and walking. Lastly it is concluded that despite prompt and correct treatment, the claimant has to continue with this disability for the remaining period of his life.

9. The claimant has deposed that he was known as Hari Bhakta Parayan. There is no cross examination on this point. He has further deposed that he had to stand 2 to 2.5 hours for one Kirtan i.e. in

standing position. He was required to visit various villages in the State of Maharashtra. Thus, considering the nature of permanent disablement, the claimant would not be in a position to visit villages so frequently and giving same performance as it was prior to the accident. Thus, considering the same and also considering the loss in the agricultural income by way of personal supervision for cultivating the lands, in my considered opinion, there is loss of income to the extent of Rs.1500/- p.m. which corresponds to Rs.18,000/- per year. It is not disputed that the claimant was 60 years old at the time of accident. Thus, considering his age, 9 would be the appropriate multiplier in this case. In view of this, the loss of future income comes to Rs.1,62,000/-. In view of details given in the medical certificate and considering the profession of the claimant and the fact of agricultural lands possessed by him situated at different places, the disablement as described in the certificate at Exh.40, in my opinion, affected his earning capacity to the extent of 50%. In view of this, the claimant is thus entitled to Rs.81,000/-. So far as the future loss of earning is concerned, learned Member has awarded compensation for medical expenses as well as diet and also for pains and sufferings. I do not find any fault in it.

10. In view of the above discussion, breakup of compensation under various heads which can be broadly categorized is as under:-

i)	Loss of future income	Rs.81,000/-
ii)	Medical expenses	Rs.8,000/-
iii)	Special diet, conveyance etc.	Rs.5,000/-
iv)	Pains and sufferings	Rs.10,000/-

Total		Rs.1,04,000/-

Thus, the claimant is entitled for total compensation of Rs. 1,04,000/-. Hence, I proceed to pass the following order:

O R D E R

- I. The appeal is hereby partly allowed.
- II. The Judgment and award dated 30.11.1996 passed by learned Member M.A.C.T. Ahmednagar in M.A.C. Application No. 173 of 1990 is hereby modified in the following manner:-

Respondent Nos. 4 and 5 jointly and severally do pay the claimant in M.A.C. application No. 173 of 1990 a sum of Rs.1,04,000/- (Rupees one lac four thousand only) to the claimants with interest @ 9% p.a. from the date of filing of application till realisation, and proportionate costs.

- III. Award be drawn up in tune with the above modification.
- IV. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)