

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

FIRST APPEAL NO.1050 OF 2010

Popat s/o Machindra Sathe,
Age:35 years, Occ. Service,
R/o. Narayandoh, Tq. Ahmednagar
Dist. Ahmednagar

**...APPELLANT
(Ori. Applicant)**

VERSUS

1. Shankar s/o Bapu Shinde,
Age Major, Occ. Business,
(Owner of Auto Rickshaw
bearing No. MH-16-3771)
R/o. Plot No.2, Vaiduwai, Savedi
Ahmednagar, District Ahmednagar
2. The National Insurance Company Ltd.
Through the Divisional Manager,
Divisional office, Ambar Plaza,
Opp. S.T. Stand, Ahmednagar,
District Ahmednagar

**...RESPONDENTS
(Ori. Opponents)**

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Mr. V.D. Hon, Senior Advocate for Appellant.
Mr. R.K. Temkar, Advocate for Respondent No.1.
Mr. A.B. Gatne, Advocate for Respondent No. 2.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 22/9/2016

Date of pronouncing the judgment: 22/11/2016

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JUDGMENT:

1. The appellant has filed the present appeal seeking enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No.679/2004 decided on 18th of January, 2010.

2. The aforesaid Claim Petition was filed by the appellant under Section 166 of the Motor Vehicles Act, claiming compensation on account of injuries caused to him in a vehicular accident happened on 15th of May, 2004, having involvement of a Rickshaw bearing registration No.MH-16-3771 owned by respondent no.1 and insured with respondent no.2. It was the contention of the appellant in the aforesaid claim petition that because of the injuries caused to him in the alleged accident, he has incurred 15 per cent permanent disability. It was his further contention that because of the permanent disability incurred by him, he was declared unfit to be continued in the service of Army and was prematurely discharged from the services on that count w.e.f. 31st of March, 2008. It was also the contention of

the appellant that had he not met with an accident and incurred the permanent disability, he would have been promoted to the post of Havildar and then to the post of Subhedar. It was also the contention of the appellant that because of the injuries caused to him and the permanent disability incurred by him, he may not be able to enjoy the amenities of life as a normal person. On all these counts the appellant had claimed compensation of Rs.25 lacs. It has to be stated that when the claim petition was filed, the appellant was in service and during pendency of the petition, he was discharged from the services of the Army. The petitioner, therefore, amended his petition bringing on record the fact of his premature discharge from the service and on that count enhanced the claim amount.

3. In order to substantiate the contentions raised in the petition the appellant himself deposed before the Tribunal and had also placed on record all necessary documents. Appellant examined one more witness by name Ramdas Nanabhau Ithape. The learned Tribunal after having assessed the oral and documentary evidence brought on record before it, partly allowed the claim

petition and awarded the compensation of Rs.8,71,000/- inclusive of the No Fault Liability compensation to the appellant jointly and severally from the owner and insurer of the offending Rickshaw. Aggrieved thereby, the appellant has preferred the present appeal.

4. Shri V.D.Hon, learned Senior Counsel appearing for the appellant criticized the impugned judgment on several counts. Learned Senior Counsel submitted that the Tribunal has utterly failed in taking into account the future prospects of the appellant while determining the amount of compensation though evidence in that regard was brought on record by the appellant. Learned Senior Counsel further submitted that had the appellant not been prematurely discharged from the services on medical ground, he would have been definitely promoted to the next higher posts upto Subhedar. Learned Senior Counsel further submitted that for wrong reasons the Tribunal has rejected the contentions raised in that regard by the appellant and has misconstrued the evidence of AW-2 Ramdas Nanabhau Ithape. Learned Senior Counsel further submitted that the Tribunal has also grossly erred in

deducting the amount of pension while determining the compensation on account of future loss of income to the appellant. Relying upon the judgment of the Honourable Apex Court in the case of **Vimal Kanvar and others Vs.**

Kishore Dan and others ((2013) 7 SCC 476).

Learned Senior Counsel submitted that in no case the Tribunal should have deducted the amount of pension while assessing the compensation payable to the appellant on account of loss of future income. Learned Counsel

further submitted that the compensation awarded by the Tribunal under the head of pain and suffering is too inadequate. Learned Senior Counsel further submitted

that the Tribunal has wrongly refused to award medical and diet expenses. To buttress his contention as about

the consideration of future prospects by the Tribunal, the learned Senior Counsel placed his reliance on the judgment of the Honourable Apex Court in the case of

Zakir Hussain Vs. Sabir & Ors ((2015) 7 SCC 252).

On all above grounds, the appellant has sought enhancement in the amount of compensation as awarded by the Tribunal.

5. Shri A.B.Gatne, learned Counsel appearing for respondent no.2 i.e. the Insurance Company, supported the impugned judgment and award. Learned Counsel submitted that the Tribunal has not committed any error in deducting the amount of pension being received to the appellant while determining the compensation under the head of loss of future income. Learned Counsel submitted that the Tribunal assigned apt reasons for deducting the amount of pension in paragraph no.18 of the impugned judgment. Learned Counsel further submitted that under the other heads also, the compensation as awarded by the Tribunal is just and adequate and no case is made out by the appellant for enhancement in the amount of compensation. Learned Counsel, therefore, prayed for dismissal of the appeal.

6. I have carefully considered the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned judgment and the other material placed on record. It is not in dispute that during pendency of the claim petition before the Tribunal, the appellant was discharged from the Military Services

w.e.f. 31st of March, 2008. It is further not in dispute that the appellant was placed in "Permanent Low Medical Category" because of the injuries sustained to him in the alleged accident and the consequent disablement incurred by him because of the said injuries. The appellant was discharged vide letter dated 8th of October, 2007, w.e.f. 31st of March, 2008, due to non availability of sheltered appointment being in permanent low medical category under Item 1(iii) (for JCO) and Item V (for OR) of the Table annexed to the Army Rule 13(3). After the appellant was discharged from the Military Services, he amended the claim petition and thereby enhanced the claim amount. It was the contention of the appellant that had he been continued in Military Services, he would have definitely secured further promotions and consequently would have been benefitted with the hike in his pay in the promoted post. As such, it was the contention of the appellant that while determining the amount of compensation, the Tribunal ought to have considered the future prospects of his promotion.

7. In order to substantiate his contention in regard to chances of his promotion, the appellant has examined

one Ramdas Nanabhau Ithape. It has come on record in the evidence of said witness that in normal course, 99 per cent persons get promotion from Lance Naik to Naik. The said witness has also deposed that he got the promotion as Havildar after having worked for a period of four and half years on the post of Naik and after having worked as Havildar for seven years, he received promotion of Naib Subhedar and, lastly, he got the promotion of Subhedar after he had put in service of four and half years on the post of Naib Subhedar. It is the contention of the appellant that appellant would have also secured the similar promotions had he not been discharged from the Military Services prematurely. The Tribunal has, however, not accepted the said contention of the appellant. In paragraph No.17 of the impugned judgment, the Tribunal has elaborately discussed the evidence on the point and has also assigned the reasons for not accepting the contention of the appellant in regard to chances of his prospective promotions. It has come on record through the evidence of AW 2 Ramdas Ithape that every promotion in Military is on the basis of merit and results of tests. The appellant had also admitted in his cross examination that

the promotions in Military Services depend on merit and physical ability. The appellant had further admitted that the promotions also depend upon the vacancies and for every promotion passing of examination is necessary. The learned Tribunal has observed that though it was claimed by the appellant that he was having fair chances of promotion, from the evidence on record, it was revealing that the appellant could not secure the further promotion after he got the first promotion from the post of Lance Naik for more than 12 years till the date of his accident i.e. 15th May, 2004. Learned Tribunal has also observed that the appellant was also not possessing any bright academic career and had secured only 50 per cent marks in his H.S.C. examination. Learned Tribunal has observed that since the promotions in the Military were dependent on merit and the result of the tests to be undergone by aspiring candidates, the contention of the appellant that he was having bright future prospects was not liable to be accepted. I do not see any infirmity in the observations so made by the learned Tribunal and the ultimate conclusion recorded by it.

8. For the aforesaid reasons though the Tribunal has rejected the contention of the appellant of determining the amount of compensation under the head of loss of income to the appellant by taking into account his future prospects, the Tribunal has assessed the future loss of income likely to be suffered by the appellant because of his premature discharge from the Military Services. While so determining the amount of compensation, the Tribunal has taken into account the salary of the appellant as on the date of his premature retirement which was Rs.9,000/- per month as stated in the impugned judgment. Further, while determining the amount of compensation, the Tribunal has deducted the amount of pension receivable by the appellant. Though it was sought to be canvassed on behalf of the appellant relying on the judgment of the Honourable Apex Court in the case of Vimal Kanwar and others Vs. Kishore Dan and others ((2013) 7 SCC 476) that pension amount could not have been deducted while determining the amount of compensation towards future loss of income, it does not appear to me that the Tribunal has committed any error in deducting the said amount by observing that since the

appellant himself was getting the amount of pension, the same was liable to be deducted while determining the compensation under the head of future loss of income. However, it appears to me that while determining the compensation towards the future loss of income, the Tribunal ought to have considered that the appellant had 11 more years of service at his credit and would have got increments in the aforesaid period resulting in hike in his pay and emoluments. It appears to me that the ends of justice would be met if the potential loss of income to the deceased is fixed at Rs.6,000/- per month. The annual loss of income thus comes to Rs.72,000/- For the purpose of multiplier, an appropriate date will be the date of premature retirement of the appellant. On the date of premature retirement, the appellant was aged about 33 years. Thus, the appropriate multiplier would be of 16. By applying the said multiplier, the loss of income can be determined to the tune of Rs.11,52,000/-. I hold the appellant entitled to the said amount.

9. Further, the Tribunal has awarded a meager sum of Rs.5,000/- towards pain and sufferings. The

amount so awarded is inadequate and unjust. It is not in dispute that in the alleged accident, the appellant suffered injury to his right leg. His right leg was operated and a screw was inserted in his right patela. It is further not in dispute that the appellant was required to take a long treatment for a period of three months and was required to get himself hospitalized on 2/3 occasions. It is further not in dispute that because of the accidental injuries, the appellant has incurred 15 per cent permanent disability. No further evidence is required to draw an inference that the appellant will have to carry the disability to the aforesaid extent throughout his life. It is further quite evident that because of the permanent disability incurred by the appellant, he may not be able to lead his future life with same vigour and zeal. It further cannot be lost sight of that the appellant may not be able to enjoy the amenities of life as he could have enjoyed had he not met with the accident. Admittedly, at the time of the accident, the appellant was a young man of 29 years; for the remaining life, he will suffer the trauma of not being able to do his normal work. It is a matter of record that the appellant has been prematurely retired for being

placed in permanent low medical category. As held by the Honourable Apex Court, in the case of Suresh Vs. New India Assurance Company Ltd. and another (2012 (10 SCALE 516)), the compensation can be granted towards permanent disability as well as loss of future earnings for one head relates to the empowerment of persons capacity and the other relates to the severity of pain and sufferings and loss of enjoyment of life by the person himself. The Honourable Apex Court in the case of Laxman Vs. Divisional Manager, Oriental Insurance Company Ltd. and another (2012 ACJ 191) has held thus:

" If the victim of an accident suffers permanent or temporary disability, then 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 earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

In view of the law laid down by the Honourable Apex Court and having regard to the peculiar facts involved in the present case, as are discussed by me hereinabove, it appears to me that a sum of Rs.1,50,000/- deserves to be awarded to the appellant towards pain and sufferings and

loss of amenities in life.

10. Thus, the compensation needs to be enhanced on two counts; first, towards loss of income and the other towards pain and sufferings and loss of amenities in life. As discussed hereinabove, the amount of compensation is enhanced under the head of future loss of income from Rs.8,64,000/- to Rs.11,52,000/- and towards the pain and sufferings and loss of amenities in life from Rs.5,000/- to Rs.1,50,000/-. The appellant is, thus, held entitled for the total compensation of Rs. 13,04,000/- In the result, the following order is passed.

ORDER

1. The appellant is held entitled to the total compensation of Rs.13, 04, 000/- (Rs. thirteen lacs, four thousand), including NFL compensation.

2. Respondent Nos. 1 and 2 shall jointly or severally pay the aforesaid amount to the appellant with interest thereon at the rate of Rs.7.5 per cent per annum w.e.f. the date of application till realization.

3. The award be modified accordingly.
4. The Appeal is allowed in aforesaid terms. No order as to the casts.

(P.R.BORA)
JUDGE

AGP/1050-10fa

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