

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1939 OF 2015

Mahesh s/o Rohidas Kedar, ... Appellant
 Age: 26 years, Occ. Nil,
 R/o Jai Malharnagar, Opp. MIDC
 Police Station, Ahmednagar,
 Dist. Ahmednagar.

Vs.

1. Walmik s/o Kisan Gaikwad,
 Age: Major, Occ. Business,
 R/o Mahegaon, Tal. Rahuri,
 Dist. Ahmednagar.
2. The Branch Manager,
 Bajaj Allianz General Insurance Co. Ltd.,
 GE Plaza, Airport Road, Yerwada,
 Pune 411 006. ... Respondents

Mr. V.S. Badakh, Advocate for the Appellant.
 Mr. S.G. Chapalgaonkar, Advocate for respondent no.2.

CORAM : P.R. BORA, J.
DATE : 29-11-2016.

ORAL JUDGMENT :

1. The present appeal is filed against the judgment and order passed by the Motor Accident Claims Tribunal at Ahmednagar in Motor Accident Claim Petition No. 399 of 2007 decided on 03.02.2012.

2. The aforesaid claim petition was filed by the present appellant seeking compensation on account of the injuries sustained by him and permanent disablement incurred because of the said

injuries in the vehicular accident happened on 15.04.2007, having involvement of Ape rickshaw owned by the present respondent no.1 and insured with respondent no.2. The appellant had claimed compensation of Rupees Six Lakhs claiming that he has lost the 100% earning capacity. It was the contention of the appellant that, because of the injuries sustained by him in the alleged accident he has incurred 65% permanent disablement. It was the further contention of the appellant that, he was serving as a Chemist in a private dairy and was earning around Rs.3,000/- per month. It was the further contention of the appellant that, because of the permanent disablement suffered by him he has lost the said job and has become jobless thereafter.

3. The claim petition was resisted by the insurance company on different grounds. The tribunal after having assessed the evidence on record awarded the compensation of Rs. 4,84,478/- inclusive of N.F.L. compensation. According to the appellant, the tribunal has not awarded the just and fair compensation. He has, therefore, preferred the present appeal.

4. The learned counsel appearing for the appellant submitted that, the tribunal ought to have considered that the appellant has lost his earning capacity to the extent of 100% and must have accordingly determined the amount of compensation. The learned counsel further submitted that, towards pain and

suffering also the tribunal has awarded a meager amount. The learned counsel further submitted that, nothing has been awarded by the tribunal towards the permanent disability incurred by the present appellant. The learned counsel, therefore, prayed for adequate enhancement in the amount of compensation as awarded by the tribunal.

5. Shri S.C. Chapalgaonkar, the learned counsel appearing for the respondent no.2-insurance company has supported the impugned judgment and award. The learned counsel submitted that, whatever evidence was adduced before the tribunal has been properly appreciated by the tribunal and the compensation awarded by the tribunal is just and proper and, as such, no interference is required in the impugned judgment and award. The learned counsel further submitted that, though, the appellant is now coming out with a case that, he has been removed from the services, before the tribunal no such evidence was placed on record neither such evidence is available in the appeal. The learned counsel submitted that, the employer was not examined by the appellant and the letter of termination or discharge has also not been placed on record. The learned counsel submitted that, since the tribunal has awarded adequate compensation the appeal be dismissed.

6. After having considered the submissions advanced by the learned counsel appearing for the respective parties and on

perusal of the impugned judgment, it appears to me that, the judgment needs interference so far as the compensation awarded by the tribunal towards pain and suffering is concerned and for non-award of the compensation under the head of permanent disablement. In so far as the compensation awarded towards loss of income is concerned, it does not appear to me that, any interference is required in the amount of compensation so assessed by the learned tribunal. It was rightly submitted by the Shri Chapalgaonkar that, even otherwise considering the provisions of Workmen's Compensation Act, in the case of loss of earning capacity to the extent of 100% also the compensation is determined at 60% of the total income. The tribunal has considered all these aspects and has appropriately determined the amount of compensation under the aforesaid head. However, the compensation as awarded of Rs. 10,000/- towards pain and suffering needs to be enhanced and adequate compensation towards permanent disablement has to be awarded.

7. Admittedly, the appellant-claimant was 19 years old at the time when he met with the accident. As has come on record the left leg of the appellant has been amputated because of the accidental injuries. The disablement as has been prescribed of 65% is not in dispute. Considering all these aspects the adequate amount of compensation under both the aforesaid heads needs to be granted adequately. It cannot be lost sight of that, the appellant

will have to lead his entire future life with the disability incurred by him. Though, the loss which is caused to the appellant cannot be computed in terms of money, considering the guidelines laid down in this regard in the judgments of the Hon'ble Apex court, it appears to me that, the appellant deserves to be granted a sum of Rupees One Lakh as the compensation towards pain and suffering and the compensation of Rs.10,000/- as awarded by the tribunal towards pain and suffering needs to be enhanced to the aforesaid extent.

8. Further, as has been held by the Hon'ble Apex Court in the case of **S. Manickam V. Metropolitan Transport Corp. Ltd.** reported in **AIR 2013 SC 2629**, compensation under the head of 'permanent disability' cannot be devied on the ground that substantial amount had been awarded under head 'loss of earning' and 'loss of earning capacity'. The Hon'ble Apex Court has observed that, while determining the quantum of compensation, the courts/tribunals have to take note of the suffering of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. It is, thus, evident that 'permanent disability' and 'loss of earning capacity' are two different heads of compensation and the compensation needs to be awarded under both the heads. Having regard to the facts of the present

case and more particularly that, at the young age of 20 years the appellant had suffered amputation of his left leg and has thereby incurred 65% permanent disability. I deem it appropriate to award a sum of Rupees One Lakh to the appellant by way of compensation under the head of 'permanent disability'.

9. For the reasons state above, I hold the appellant entitled for the enhanced compensation to the tune of Rs. 1,90,000/- (Rupees One Lakh Ninety Thousand) in addition to the compensation as awarded by the tribunal. The respondents shall jointly and severally pay the enhanced amount of compensation to the appellant with interest thereon @ 9% per annum from the date of filing of the application till its realisation. The award shall be accordingly modified. The appellant shall pay the deficit court fee if any. Before preparation of the modified award it be ensured that the deficit court fee is recovered from the appellant, if it is so required. The appeal stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

mub