IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2901 OF 2015

Dnyaneshwar s/o Gajanan Gavate
Age 19 years, Occ. Education
R/o. Belura,Tq. And District Beed ...Appellant

versus

1. Popat s/o Balasaheb Shinde,
Age major, Occ. Tractor owner,
R/o. Hiwarsinga, Tq. Shirur K.
district Beed.

2. Dadasaheb s/o Dattu Gavate
Age major, Occ. Driver
R/o. Belura, Tq and Dist. Beed

3. Reliance General Insurance
Company Ltd. through Branch
Manager, Branch Office
Reliance Center, 19, Walchand
Hirachand Marg, Ballard Estate
Mumbai 400 001 ...Respondents

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Advocate for Appellant : Mr. Deshmukh Mohit R.
Advocate for respondent Nos. 1 and 2: Mr. Suhas R. Shirsat
Advocate for Respondent No.3 : Mr. S.S. Patil

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CORAM : V. K. JADHAV, J.
DATED : 14th JULY, 2016

PER COURT:-

1. By consent, heard finally at admission stage.

2. Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Beed, dated

21.1.2014, in M.A.C.P. No. 275 of 2011, the original claimant has preferred this appeal to the extent of quantum.

3. Brief facts of the case, giving rise to the present appeal, are as follows:-

a) On 10.7.2011, at about 10.30 to 11.00 a.m. when the claimant Dnyaneshwar was grazing buffalo near the wall of percolation tank of village Belura, a tractor bearing registration No. MH-23/T-1249 came from Belura side in high speed, in rash and negligent manner and gave a forceful dash to the claimant. In consequence of which, the claimant had sustained injuries to his right leg and other parts of the body. The claimant was shifted to Phoenix Hospital, Beed for medical treatment, and from there he was referred to Aurangabad and he was treated in City-care Hospital, Aurangabad. The claimant was 16 years old at the time of accident and he was taking education in 10th standard. The injuries sustained by him in the accident resulted into amputation of his right leg. Medical Board examined him and issued permanent disablement certificate to the extent of 70%. The claimant has suffered 100% disabilities and he is required to take help of another person for his day to day routine work.

He has also incurred huge medical expenses for his medical treatment. The claimant therefore, had preferred M.A.C.P. No. 275 of 2011 for grant of compensation under various heads, such as expenses incurred on treatment, physical pains and mental shock, loss of amenities of life, inevitable expenses and loss of future income.

b) The respondents owner and driver resisted the claim by filing their written statement at Exh.19. They admitted the accident, registration of crime against respondent No.1 and owner of the tractor. It has contended that the vehicle is insured with respondent No.3. It was further contended that on the day of accident, respondent No.2 was driving his vehicle in moderate and slow speed. The claimant was grazing his buffalo and one buffalo suddenly came on road. Consequently, driver had applied brakes and therefore, accident has taken place. In the alternative, it has contended that respondent No.3 insurer is liable to satisfy the award if passed against the respondent-owner.

c) Respondent No.3 insurer has resisted the claim by filing written statement at Exh.15. It has contended that the driver of the tractor was not holding valid and effective driving licence on the day of accident and therefore, there is contravention of the terms and conditions of policy. It has also contended that the amount claimed is exorbitant, excessive and baseless.

d) In the light of pleadings of the parties and evidence adduced in support of rival contentions, learned Member of the tribunal has partly allowed the claim petition with proportionate costs and thereby directed respondent Nos. 1 to 3 and pay jointly and severally an amount Rs.7,02,664/- inclusive of “no fault liability” to the claimant with interest @ 6% p.a. from the date of petition i.e. 28.11.2011 till realization of entire amount. Being aggrieved by the same, original claimant has preferred this appeal to the extent of quantum.

4. Learned counsel for the appellant submits that the claimant Dnyaneshwar was only 16 years of age at the time of accident. His right leg was amputated below the knee. The Tribunal has considered his notional income and without considering the future medical expenses awarded the compensation by treating the percentage of disablement as loss of earning capacity. In the backdrop of this, the Tribunal ought to have considered 100% loss in the earning capacity of the claimant. The Tribunal has erroneously applied the multiplier 16 instead of 18. Furthermore, the Tribunal has

also committed error in granting interest on compensation amount @ 6% p.a. instead of 9% p.a. The Tribunal has not correctly awarded the compensation under non pecuniary heads, such as pains and sufferings, loss of amenities in future life etc. Learned Member has not considered the future medical expenses even though the claimant has deposed about it and also the Medical Officer.

Learned counsel for the appellant, in order to substantiate his contentions, places reliance on the judgments in following cases:-

I) Kumresh vs. Divisional Manager, National Insurance Company Limited and another, reported in (2011) 12 SCC 488

iii) Judgment in first appeal No. 204 of 2015 decided by this Court on 17.11.2015.

5. Learned counsel for the respondent-insurer submits that learned Member of the Tribunal has considered the medical evidence and after considering the admission given by the witness-doctor in his cross examination, rightly treated the percentage of disablement as percentage of loss of earning capacity and awarded just and reasonable compensation. Learned counsel concedes that the Tribunal should have applied multiplier 18 instead of 16. So far as

the rate of interest is concerned, the Tribunal has correctly awarded interest @ 6% p.a. The Tribunal has awarded just and reasonable compensation under non pecuniary heads and no interference is required in the same. So far as the future medical expenses are concerned, the claimant has not brought on record any evidence to indicate that the future medical expenses are likely to be incurred by the claimant under different heads and in absence of that, the Tribunal has rightly not considered the claim to the extent of future medical expenses.

6. The claimant has examined Dr. Anshuman Bahir as witness No.2 to prove the contents of disablement certificate. He has deposed that right leg below the knee was amputated and he has issued disablement certificate at Exh.41. He has further explained that there is 70% permanent disablement to the claimant. In cross examination, he has explained that the claimant can do the normal work if artificial right leg is fixed. So in view of admission given by witness No.2-Dr. Anshuman Bahir, it cannot be said that the claimant, who was 16 years of age at the time of accident has lost is earning capacity to the extent of 100%. It is true that the Tribunal has considered the age, notional income and other aspects, however, it does not mean that the claimant, in that way, has lost his earning capacity to the extent of 100%. Learned Member of the

Tribunal has therefore, rightly treated the percentage of his permanent disablement as percentage of loss of earning capacity and accordingly awarded just and releasable compensation towards loss of future income.

7. So far as grant of compensation under non pecuniary heads is concerned, in the case of ***Kumaresh vs. Divisional Manager, National Insurance Company Ltd. and others (supra)*** in para 12 of the judgment, the Apex Court has made the following observations.

> *"12. The appellant is aged just 20 years and one of his legs has been amputated below the knee. It will not only severely affect his future prospects of earning, but he will also have to be permanently disabled for life and suffer the necessary discomforts accompanying living without a leg. It greatly minimizes his chances of getting married. In light of all this, we enhance the amount awarded for loss of amenities and enjoyment of life, including loss of marital prospects, to Rs.3,00,000/- We also enhance the amount awarded for medical expenses for his whole life to Rs.1,00,000, conveyance charges to Rs.50,000 and for food and nourishment to Rs.50,000 considering the nature of injuries sustained by the appellant. The compensation awarded by the High court under the other heads is sustained."*

8. In the case cited above, the appellant-original claimant in the said case has also suffered from amputation of his leg below the knee. The Apex Court has considered that the amputation below knee has not severely affected his future prospects of earning capacity but the claimant will also have to be permanently disabled for life and suffer the necessary discomforts accompanying living without a leg. It greatly minimizes his chances of getting married. In the light of that, the Apex Court has enhanced the amount awarded for loss of amenities and enjoyment, including loss of marital prospectus, to Rs.3,00,000/-. In the case in hand, the Tribunal has awarded Rs.2,00,000/- towards physical pains and sufferings and loss of amenities. In the light of observations made by the apex court, it would be just and appropriate if the compensation of Rs.3,00,000/- is awarded instead of Rs.2,00,000/- under heads of loss of amenities and enjoyment of life and pains and sufferings including the loss of marital prospects.

9. Learned counsel for the respondent insurer has placed his reliance on the admission given by witness No.2-Dr. Bahir to substantiate his submissions that the claimant has lost his earning capacity to the extent of disablement sustained by him. However, learned counsel has strongly resisted the submissions of counsel for the claimant for grant of compensation on account of future medical

expenses. If the claimant can do normal work by fixing artificial leg then for that purpose the claimant is required to incur the expenses in future. It is true that the claimant has not adduced any evidence as to how much amount is required for fixing the artificial leg. There is no evidence to show that the medical expenses are likely to be incurred by the claimant for fixing the artificial leg. In absence of that, the lump-sum amount can be awarded by considering the future medical expenses and it would be just and appropriate to award Rs.1,00,000/- on this count.

10. So far as application of multiplier is concerned, it appears that the learned member of the Tribunal has erroneously applied the multiplier 16 instead of 18. So far as the rate of interest is concerned, this Court in first appeal No. 204 of 2015 (Anjali Ramesh Salunke and others vs. M.S.R.T.C. decided on 17.11.2015) by relying upon the case of ***National Insurance Company Ltd. vs. Dr. Ashok Raikar and others, 2012 ACJ 255*** and further relied upon the judgment in the case of ***Mohan Soni vs. Ram Avtar Tomar and Ors, reported in 2012 ACJ 583*** has awarded the interest @ 9% p.a. on the amount of compensation assessed in case of vehicular accident. Learned counsel for the respondent-insurer has placed his reliance on the judgment of Andhra Pradesh High Court in the case of ***APSRTC, Kurnool s. M. Srinivasa Reddy, reported in 2015 (6)***

ALL MR (Journal) 83 wherein the rate of interest is reduced from 9% to 7.5%. However, in the case cited by learned counsel for the respondent-insurer date of accident is 2.11.2000 whereas in the case in hand the accident had taken place in the year 2011. In view of this, the claimant is entitled for interest at the rate of 9% p.a. on the amount of compensation from the date of petition till realization of entire amount.

11. In view of above discussion, the notional income of the claimant is treated Rs.3,000/- p.m. corresponding to Rs.36,000/- per annum. There is no dispute that the claimant was 16 years old at the time of accident, therefore, 18 would be the appropriate multiplier. Thus, applying the multiplier 18, the annual loss of income comes to Rs.6,48,000/- (Rs. 36,000 x 18= 6,48,000/-). The claimant has suffered 70% disablement therefore, he is entitled for compensation of Rs.4,53,600/- (70% amount of Rs.6,48,000/-) on account of pecuniary loss. In so far as the amenities in life, pains and sufferings, loss of marriage prospects and future medical expenses are concerned, the claimant is entitled for Rs.1,00,000/- under each head.

12. In view of above discussion, the break of compensation which can be broadly categorized is as under:-

i)	Loss of future income (by applying multiplier 18 instead of 16)	Rs. 4,53,600.00
ii)	Loss of amenities	Rs. 1,00,000.00
iii)	Towards pains and sufferings	Rs. 1,00,000.00
iv)	Loss of marriage prospects	Rs. 1,00,000.00
v)	Future medical expenses	Rs. 1,00,000.00
vi)	Medical bill amount	Rs. 99,464.00
	Total	Rs. 9,53,064.00

Thus, the claimant is entitled for total compensation of Rs.9,53,064.00 (Rupees Nine lacs fifty three thousand sixty four only).

13. In view of above discussion, 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 21.01.2014 passed by the learned Member, M.A.C.T. Beed in M.A.C.P. No. 275 of 2011 is hereby modified in the following manner:

"The respondent Nos. 1 to 3 jointly and severally do pay an amount of Rs. 9,53,064.00 (Rupees Nine lacs fifty three thousand sixty four only) inclusive of no fault liability amount, as a compensation to the claimant with interest at the rate of 9% p.a. from the date of filing of petition i.e. 28.11.2011 till full satisfaction of the award."

III. Rest of the judgment and award passed by the Tribunal stands confirmed.

IV. Award be drawn up in tune with the modification, as aforesaid.

V. First appeal is accordingly disposed of.

VI. Needless to state that the amount already withdrawn by the claimant is liable to be deducted from the modified award as aforesaid.

(V. K. JADHAV, J.)

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