

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.58 OF 2016

Kailash s/o Janardhan Bhojane

Age: 25 Yrs., occu. Driver,

R/o Chitegaon, Tq.Paithan,

District Aurangabad.

= **APPELLANT**
(orig. claimant)

VERSUS

1) M/s Ajantha Pharma Ltd.,
MIDC Plot No.456, Paithan,
Dist. Aurangabad.

2) Kailash s/o Tukaram Veer,
Age:Major, occu. Driver,
R/o Kamgar Colony,
Chikalthana, Aurangabad.

3) The Divisional Manager,
Oriental Insurance Co. Ltd.
Adalat Road, Aurangabad.

= **RESPONDENTS**
(orig. Respondents)

Mr. Satish A.Gaikwad, Advocate for Appellant;

Mr. SS Dambe, Adv. h/for Mr. NT Tribhuvan, Adv.
For Respondent Nos.1 & 2;

Mr. SB Choudhari, Adv. h/for Mr. SV Dahiwal, Adv.
For Respondent No.3.

CORAM : P.R.BORA, J.

DATE : 27th September, 2016.

ORAL JUDGMENT:

1) Heard. Admit. By consent of the learned Counsel appearing for the parties, taken up for final disposal.

2) The petitioner - claimant in MACP No.619/2011 has filed the present appeal seeking enhancement in the amount of compensation awarded in the said matter by Motor Accident Claims Tribunal, at Aurangabad decided on 23.9.2015. The aforesaid claim petition was filed by the appellant seeking compensation from the driver, owner and insurer of the tempo involved in the said accident bearing registration No. MH-20-AT-1023 for the injuries caused to him in the said accident.

3) It is the case of the appellant that he was serving as driver at the relevant time and was earning around Rs.5,000/- per month. It was

his further contention that in the accident so happened, he sustained severe injuries and has incurred 30% permanent disability because of the injuries caused to him in the said accident. The appellant had claimed the compensation of Rs.3,00,000/-. Before the Tribunal the appellant himself deposed and he has filed on record the medical bills as well as injury certificate and permanent disability certificate.

4) As is revealing from the discussion made by the Tribunal, though the concerned medical officer was not examined by the appellant, who had issued a permanent disability certificate in his favour, the contesting respondent has conceded for treating the permanent disability caused to the appellant to the extent of 25%. The Tribunal has thus awarded the compensation holding that the appellant incurred 25% permanent disability because of the injuries caused to him in the alleged accident. The Tribunal has awarded the total compensation

of Rs.76,915/-, as particularized below, -

Sr. No.	Particulars of the head	Amount in Rupees
1	Pains and agony	25,000/-
2	Medical Expenditure	25,915/-
3	Loss of future happiness	10,000/-
4	Shortening of life time	10,000/-
5	Loss of Income for two months	6,000/-
TOTAL		76,915/-

5) Shri Gaikwad, learned Counsel appearing for the appellant, submitted that the Tribunal though has accepted that the appellant did incur the permanent disablement to the extent of 25%, has not awarded any compensation towards future loss of income. The learned counsel further submitted that on the contrary, the Tribunal has recorded a finding that the petitioner is not justified in claiming any compensation on account of loss of future income.

. According to the learned counsel, the finding so recorded is grossly erroneous. The learned Counsel submitted that the Tribunal has manifestly erred in not awarding the compensation to the appellant claimant on account of future

loss of income. The learned counsel submitted that the appellant was, at the relevant time, earning around Rs.5,000/- per month by way of doing job of driver.

. The learned Counsel submitted that without any cogent reason, the Tribunal has held the income of the appellant to the tune of Rs.3,000/- per month only and has accordingly assessed the amount of compensation. The learned Counsel, therefore, prayed for enhancement in the amount of compensation and more particularly for award of compensation under the head of loss of future income.

6) Shri S.B.Choudhari, learned Counsel holding for Shri Dahiwal, learned counsel for Respondent No.3 and Shri N.T.Tribhuwan, learned counsel for Respondent Nos. 1 and 2, have supported the impugned Judgment and Award. The learned Counsel submitted that considering the overall circumstances and the evidence on record, the Tribunal has rightly awarded the compensation

to the tune of Rs.76,915/- and no interference is required in the Judgment and Award so passed.

7) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also gone through the evidence on record and more particularly the documents placed on record.

. On perusal of the impugned judgment, it is revealed that the Tribunal has recorded a finding that the petitioner is not justified in claiming any compensation on account of loss of future income. The conclusion so recorded is apparently incorrect. The observations made by the Tribunal in that regard also cannot be sustained.

8) It is not in dispute that the appellant was working as driver when he met with an accident and the said job was the only source of his livelihood. The material on record reveals that throughout it was the specific contention of

the appellant that he has become incapable of performing the job of a driver because of the disability sustained by him. It is true that the appellant did not examine the medical officer, who has issued the permanent disability certificate, so as to bring on record through his evidence about his incapacity to perform the job of a driver in future. However, it cannot be ignored that the contesting respondent has conceded to treat the permanent disability incurred by the appellant to the extent of 25%. In the aforesaid circumstances, because of failure on part of the claimant in not bringing on record expert medical evidence to show that due to 25% permanent disability, the claimant cannot do any work and that he has lost his total earning capacity. No such conclusion should have been recorded by the Tribunal that the claimant has not sustained any functional disability. The further observation of the Tribunal that the petitioner is not justified in claiming any compensation on account of loss of future income

also therefore can not be subscribed. It appears to me that the Tribunal has failed in appreciating the facts in a proper perspective. It is quite evident that in view of the conclusions reached by the Tribunal, it has awarded inadequate compensation even under the heads of pains and suffering and towards loss of amenities in life.

9) It is true that the compensation for loss of earning capacity has to be determined based on various aspects including permanent disability. At the same time, it cannot be construed that the compensation cannot be granted for permanent disability of any nature. Even without medical evidence, it was quite possible for the Tribunal to draw an inference that a person sustaining 25% permanent disability and that too of such organs, which have some connection with the skill of driving, the appellant may not be able to drive a vehicle with the same efficiency and skill as he was driving

before meeting with the accident. Though there may not be any such positive statement made by the appellant or any evidence in that regard from the side of the appellant, a reasonable inference can be drawn that the appellant may not be able to drive for a longer period and/or for a longer distance and as stated earlier, with the same efficiency. This will certainly have material impact on his earning capacity also; and as such, the appellant definitely needs to be compensated to the aforesaid extent. In absence of any concrete evidence in that regard though it may not be possible to have the arithmetical calculations so as to draw the exact figure of compensation to be awarded for loss of earning capacity on the basis of structured formula, considering the overall circumstances and more particularly having regard to the young age of the appellant, I deem it appropriate to award amount of Rs. 1,50,000/- to the appellant towards loss of earning capacity.

10) It further appears to me that towards pains and suffering and for loss of amenities in life also, the Tribunal has awarded inadequate compensation. Admittedly, at the time of the accident, the appellant was a young man of 25 years. For the remaining life he would not be able to lead a full life as a normal person. Moreover, he would also not be able to enjoy the normal amenities of life 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, also has been materially affected, the compensation under the aforesaid heads also needs to be adequately enhanced.

. I must further mention that the permanent disability and loss of future earning are two distinct heads. One head relates to impairment of person's capacity and other relates to sphere of pain and suffering and loss of enjoyment of life. In the circumstances, the efforts should also 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 of life. I am, therefore, inclined to enhance the compensation awarded by the Tribunal under the heads of pains and agony and for loss of future happiness from Rs. 35,000/- to Rs.1,00,000/-. The appellant is thus entitled to receive the total compensation of Rs.2,91,215/-. In the facts and circumstances of the case, this will be the just and fair compensation payable to the appellant. Hence, the following order, -

ORDER

i) The appellant is held entitled to the total compensation of Rs.2,91,215/-, inclusive of the compensation paid under No fault liability;

ii) Respondent Nos. 1 and 2 shall jointly and severally pay the aforesaid amount of compensation to the appellant with interest thereon @ 9% p.a. From the date of the petition till realization of

the same;

iii) The Award be prepared accordingly;

iv) The appeal is allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/