

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 726 OF 2016

AJIT KISAN BHANGRE
VERSUS
THE DIVISIONAL CONTROLLER, M.S.R.T.C., SARJEPURA

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Advocate for Appellant : Mr. K.N. Shermale
Advocate for Respondents : Mr. M.K. Goyanka

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CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2017

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 27.10.2015, passed by the learned Member, M.A.C.T. Sangamner, in M.A.C.P. No. 156 of 2009 the original claimant has preferred this appeal to the extent of quantum.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) On 14.1.2009, at about 3.00 p.m. the appellant claimant was coming from Ahmednagar in a S.T. Bus to Sangamner. On way, the said Bus met with an accident. The accident had taken place on account of rash and negligent driving on the part of driver of S.T. Bus. In consequence of which, the appellant claimant has sustained serious

injuries, which resulted in amputation of his left leg below knee. The appellant has thus, claimed compensation under various heads by filing M.A.C.P. No. 156 of 2009.

b) The learned Member of the Tribunal by its impugned judgment and award, after considering the evidence on record awarded the compensation of Rs.2,60,600/- inclusive of 'no fault liability' amount. Hence, this appeal.

4. Learned counsel for the appellant submits that even though the appellant claimant suffered permanent disablement in the form of amputation to his left leg below knee and even though the permanent disablement certificate in Form COMP. B issued by the Orthopedician attached to the Government Hospital, Nashik certifying therein the percentage of permanent disablement at 60%, learned Member of the Tribunal has erroneously considered the percentage of permanent disablement at 30% by referring occupation of the appellant-claimant and probable loss in his agriculture income. Learned counsel submits that even though the appellant-claimant has placed on record the documents pertaining to medical expenses incurred by him to the tune of Rs.69,769/-, the Tribunal, for no reason, has awarded Rs.50,000/-. Furthermore, learned Member of the Tribunal has not awarded any compensation under the head of future medical treatment on the ground that there is no evidence led by the claimant in this regard. Learned

counsel submits that left leg of the appellant-claimant came to be amputated below knee level and no separate evidence is required to be given for medical treatment in future including purchase of artificial leg etc.

5. Learned counsel for the appellant submits that even the Tribunal has awarded very meager amount under non pecuniary heads, such as, pains and sufferings, special diet, attendance charges etc. Learned counsel submits that even though the appellant claimant has examined witness No.3 Sitaram Deshmukh to prove the conveyance charges and the receipts issued by the said witness are marked at Exh. 38 to 48 respectively, the Tribunal has ignored the same and awarded meager amount of Rs.10,000/- only. Even though the agricultural land is owned and possessed by the family jointly, still then the appellant-claimant was cultivating the land alongwith family members, the Tribunal has considered as notional income of Rs.3000/- p.m., awarded the compensation by treating the said disablement at 30%. Learned counsel submits that even Schedule I Part II of Employees Compensation Act, in case of amputation below knee level, the loss of earning capacity is considered as 60%. The learned Member of the Tribunal has ignored the same.

Learned counsel for the appellant, in order to substantiate his submissions, placed reliance on the judgment of Supreme Court in the

case of ***Govind Yadav vs. New India Insurance Company Limited, reported in (2011) 10 SCC 683***, wherein the Supreme court has considered 70% permanent disablement as certified by the Orthopedician and accordingly awarded compensation under the head of loss of future income by taking into account the notional income of the claimant/injured in that case at Rs.3000/- p.m. In the above cited case, the Supreme Court has also awarded substantial amount under pains and suffering and for future medical treatment.

6. Learned counsel for the respondent M.S.R.T.C. submits that on perusal of 7x12 extract, it appears that the appellant claimant was not exclusive owner in possession of the agricultural land and agricultural land is standing in the name of his father. Further, as per the admission given by the claimant, the family members are looking after the agricultural land and there is no loss in income as such. Learned counsel submits that considering the same, the Tribunal has considered loss in the supervision charges and accordingly awarded compensation by considering the loss of future income to the extent of 30%. Learned counsel submits that the Tribunal has awarded just and reasonable compensation under non pecuniary heads. Since the appellant claimant has failed to substantiate his contentions about future medical expenses, the Tribunal has not awarded any compensation. No interference is required.

7. On considering the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that though the Tribunal has considered notional income of the appellant at Rs.3000/- p.m. awarded compensation by treating permanent disablement suffered by the appellant claimant to the extent of 30%. Even after referring Schedule I part II of Employees Compensation Act, in case of amputation below knee, the percentage of loss of earning capacity is considered at 60%, I find no justifiable reason to consider the permanent disablement of the appellant-claimant to the extent of 30%. Even assuming that the appellant claimant sustained loss in the form of supervisory work of agriculture, however, it cannot be ignored that the appellant claimant, who was 26 years of age at the time of accident and suffering from amputation on his left leg below knee, was assisting his family in fetching the income from agricultural source.

8. In view of the above, the notional income of the appellant claimant as considered by the Tribunal at Rs.3000/- p.m. and pursuant to the disablement if considered at 60%, as certified by witness No.2 Dr. Bhikan More, the yearly loss of income comes to Rs.21,600/-. There is no dispute about application of multiplier 17 considering the age of the appellant-claimant. In view of the same, the appellant is entitled for Rs.3,67,200/- towards loss of future income. The appellant is also entitled for amount of Rs.69,769/- for actual medical expenses as against Rs.50,000/- awarded by the Tribunal. It has come in the

evidence that the appellant claimant remained hospitalized for near about 5 to 6 months and his left leg below knee came to be amputated. The appellant claimant is thus entitled for Rs.1,00,000/- as against Rs.10,000/- towards pains and sufferings and Rs.20,000/- for special diet as against Rs.5000/- as awarded by the Tribunal. So far as the conveyance charges are concerned, the appellant-claimant has examined witness No.3 Sitaram Deshmukh, who used to give his vehicle on hire basis to the appellant-claimant for taking him to the hospitals at Ahmednagar from Sangamner. He has charged Rs.3,500/- on every such visit and also issued receipts to that effect, which are marked Exh.38 to 48. Those receipts bear his signature on revenue stamp. In view of the same, the claimant is entitled for amount of Rs.36,500/- towards conveyance charges as against the Rs.10,000/- awarded by the Tribunal. So far as the future medical treatment is concerned, the appellant claimant has not deposed about probable medical expenses in future, however, considering the amputation of left leg below knee level, the expenses towards artificial leg etc. would be required. Thus, the claimant is entitled for amount of Rs.50,000/- towards future medical expenses. The claimant is also entitled for Rs.20,000/- towards the attendance charges as against Rs.2,000/- as awarded by the Tribunal.

9. Thus, the break up of compensation under various heads which can be broadly categorized, is as under:-

i)	Loss of future earning capacity (as against Rs.1,83,600/- awarded by the Tribunal)	Rs. 3,67,200.00
ii)	Medical expenses (as against Rs.50,000/- awarded by the Tribunal)	Rs. 69,769.00
iii)	Pains and sufferings (as against Rs.10,000/- awarded by the Tribunal)	Rs. 1,00,000.00
iv)	Special diet (as against Rs.5,000/- awarded by the Tribunal)	Rs. 20,000.00
v)	Transportation (as against Rs.10,000/- awarded by the Tribunal)	Rs. 36,500.00
vi)	Artificial leg etc. and for future medical treatment (The tribunal has not awarded any amount under this head)	Rs. 50,000.00
vii)	Attendance charges (as against Rs.2,000/- awarded by the Tribunal)	Rs. 20,000.00

Total Rs. 6,63,469.00

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Thus, the claimant is entitled for Rupees six lacs sixty three thousand four hundred sixty nine. The judgment and award is required to be modified. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 27.10.2015 passed by the

M.A.C.T. Sangamner in M.A.C.P. No. 156 of 2009 is hereby modified in the following manner:-

“The appellant-claimant is entitled for amount of Rs.6,63,469.00 (Rupees Six lacs sixty three thousand four hundred sixty nine only) inclusive of 'no fault liability' amount from the respondent and the respondent do pay the same inclusive of 'no fault liability' with interest @ 8% p.a. from the date of filing of claim petition i.e. 16.9.2009 till its realization, excluding the period from May, 2013 till 29.01.2015.”

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. Needless to say that if any amount is paid as per the award passed by the Tribunal, the same shall be adjusted in the modified award, as above.
- VI. The first appeal is disposed of.

(V. K. JADHAV, J.)

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