

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1353 OF 2015

ANANT SIDHESHWAR DUKRE
VERSUS
PRATAP ZHAMPANNAPPA LAMZANE AND ANOTHER

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Adv. for Appellant : Mr. D.M. Mane h/f Mr. P. A. Bharat and N.G. Talekar
Advocate for Respondent No.1 : Mr. P.N. Kalane
Advocate for Respondent No.2 : Mr. A.S. Deshpande
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CORAM : V. K. JADHAV, J.
DATED : 25th JANUARY, 2017

PER COURT:-

1. Heard finally with consent of parties at admission stage.
2. Being aggrieved by the judgment and award dated 7.2.2015, passed by the learned Member, Motor Accidents Claims Tribunal, Bhoom, in M.A.C.T. No. 33 of 2014, the original claimant has preferred this appeal to the extent of quantum.
3. It is not disputed that on 16.10.2009 at about 9.30 a.m. on Pune-Solapur National Highway No.9, within the vicinity of village of Swami Chincholi, Tq. Daund, the appellant claimant was proceeding on his motor cycle and at that time, the driver of Maruti Car, bearing registration No. MH-14-AE-1108 gave dash to his motor cycle, by driving the Maruti Car in rash and negligent manner. In consequence of which, the appellant claimant has sustained multiple injuries, which

resulted into permanent disablement to the extent of 75%, as opined by Orthopedist. The appellant claimant has approached the Motor Accident Claims Tribunal, Bhoom by filing M.A.C.P. No.33 of 2014 for grant of compensation under various heads.

4. According to the appellant-claimant, he was in the employment of one Shri Neeraj Tiwari, as a driver on his private car on monthly salary of Rs.8000/- and on account of disablement sustained by him to the extent of 75%, he is neither in a position to drive the car nor able to do any other work. His earning capacity is affected to the extent of 100%. The appellant claimant has also prayed for grant of compensation towards medical expenses, future loss of income, for non-pecuniary heads, such as pains and sufferings, loss of amenities in future life and also claimed compensation for conveyance, special diet and attendance charges etc. The learned Member of the Tribunal, by judgment and award dated 7.2.2015 directed the respondents to pay compensation of Rs.7,00,000/- jointly and severally alongwith interest at the rate of 7% p.a. from the date of petition till its realization. Hence, this appeal by the appellant claimant to the extent of quantum.

5. Learned counsel for the appellant original claimant submits that the learned Member of the Tribunal for no reason has made departure from multiplier method and granted lump-sum amount of compensation. The Tribunal has not granted compensation under various heads as

claimed by the appellant claimant. The learned Member of the Tribunal has not considered future loss of income, actual loss of income, medical expenses and also disablement sustained by the appellant to the extent of 75% which has affected his earning capacity to the extent of 100%. Learned Member of the Tribunal has also not awarded any compensation under the head of pains and sufferings, conveyance, special diet charges and attendance charges. Even the Tribunal has not considered future medical expenses and expenses incurred during pendency of appeal. Learned counsel submits that the Tribunal has erroneously granted interest @ 7% p.a. instead of 9% p.a. which is almost a settled law.

6. Learned counsel for respondent No.2 insurer submits that the Tribunal has considered the disablement sustained by the appellant claimant to the extent of 75% and accordingly awarded compensation. Even though the appellant claimant has failed to prove the bills towards medical expenses, the Tribunal has awarded the compensation under the said head also. Learned Member of the Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal and the appeal is liable to be dismissed.

7. I have also heard learned counsel for respondent No.1 owner.

8. On careful perusal of the judgment and award, I find that the

learned Member of Tribunal for no reason has made departure from multiplier method to assess the compensation in respect of personal injury claim. It is well settled that, in such a case, the multiplier method to assess the just and reasonable compensation would be more appropriate and departure from the said method would be permissible in a very rarest of rare case. In the instant case, the learned Member of the Tribunal has not made any observation in this regard and without any reason, has made the departure from traditional multiplier method to assess the compensation. In the given set of facts, I do not think that this is a case wherein the departure from multiplier method would be justified.

9. The appellant claimant has deposed in detail about the injuries sustained by him in the said accident. He was treated in various hospitals and operated twice or thrice. Even steel rods were inserted in his right thigh and also in the right knee. He had sustained injury on his right shoulder where some artificial material is inserted for the movement, though restricted, on his right shoulder.

10. The appellant claimant has examined Dr. Anant Sudhir Kulkarni, who is M.B.B.S. M.D. and diploma in Orthopedic. He is practicing at Barshi since 2004. On examination of the appellant claimant, when he was brought to his hospital, he found that the appellant claimant undergone operation for brachial plexus injury of right upper limb and

fracture of right femur. The doctor has observed that the appellant claimant was unable to move right upper upper limb and there was wound on right upper side of right thigh. The learned Member of the Tribunal has discarded the certificate issued by this witness about the injuries and disablement sustained by the claimant only on the ground that the appellant claimant was treated initially in some different hospitals and witness Dr. Anant Kulkarni had issued certificate about the disablement at later stage. However, on perusal of the evidence of witness Dr. Anant Kulkarni, it appears that Dr. Kulkarni has treated the appellant claimant from 25.10.2010 to 24.5.2012. From 25.10.2010 to 9.11.2010 the appellant claimant was indoor patient in his hospital and again from 25.11.2010 to 5.12.2010 he was admitted and was indoor patient in his hospital. He had also issued discharge cards, which are duly proved and the same are marked at Exh. 34 and 35. On 24.5.2012, the witness Dr. Anant Kulkarni has issued disablement certificate to the appellant claimant and according to him, the appellant claimant suffered 75% disablement due to right upper limb monoplegia, secondly to brachial plexus injury and infective non union of right shaft femur with stiff right knee and vesting of hip, thigh and calf muscle with restricted movement of right hip. He has issued the said certificate in Comp Form B, which bears his signature and the same has been duly proved and marked Exh.36. The doctor has further opined that due to disablement referred to above, the appellant claimant is unable to drive any motor vehicle or to do any labour work or any other work. There is

nothing in the cross examination of this witness to draw any other inference about the percentage of disability sustained by the appellant claimant and further about the effect on his earning capacity, as opined by witness Dr. Anant Kulkarni.

11. The appellant claimant has examined one Neeraj Rajendra Tiwari to prove his income. According to the appellant claimant, he was serving as a driver on his private car on monthly salary of Rs.8500/-. The said witness No.3 Neeraj Tiwari has deposed that he is working as General Manager in One Fiat India Automobiles Ltd. from June, 2008 and he is head of engine department. He has further deposed that appellant claimant was serving with him on his private car from 1.8.2008 as driver on monthly salary of Rs.8500/-. He has issued certificate to that effect, the same is marked at Exh.42. This witness has admitted in his cross examination that the appellant claimant was not employee of said Fiat India Automobiles Ltd. company and he has kept the appellant claimant in the employment in his private capacity as a driver on his personal car. However, it appears that witness No.3 Neeraj Tiwari has deposed about monthly salary of appellant claimant on higher side. Witness Neeraj Tiwari is holding the post of General Manager in the said company and I do not think that he has given false evidence about employment of the appellant claimant. However, I do not think that the person, who is a driver on private car would get Rs.8500/- p.m. as salary when all time his employer, who is serving as General Manager,

and working as a head of Engine department in the said Fiat India Automobiles Company, has to travel in the city alone. In view of the above, it would be just and appropriate if the monthly income of appellant claimant from the said employment is considered at Rs.5000/-, corresponds to Rs.60,000/- per year.

12. The appellant claimant has produced on record his original driving licence in which his date of birth is mentioned as 23.9.1980. Thus, on the date of accident, he was 29 years of age. In view of the above, relevant multiplier would be 17. Thus, the aforesaid amount of income, if considered by applying multiplier 17, the appellant claimant has sustained the loss of future income to the tune of Rs.10,20,000/-. Learned counsel for the respondent insurer has vehemently submitted that the appellant claimant has sustained the disablement to the extent of 75% and is entitled for the amount of compensation towards future loss of income to that extent only. I do not find any substance in the above submission for the reason that witness Dr. Anant Kulkarni, has given opinion, unequivocally, that on account of aforesaid disablement to the extent of 75%, the appellant claimant is not able to drive the motor vehicle in future and he is also unable to do the labour work or any other work. In view of this, the earning capacity of the appellant claimant has been affected to the extent of 100% though he has sustained permanent disablement to the extent of 75%. Thus, the appellant claimant is entitled for amount of Rs.10,20,000/- as a loss of

future income.

13. It further appears from the evidence of the appellant claimant that after the accident he was admitted and treated in various hospitals and total period of his admission and treatment in hospitals comes to 40 days. The monthly salary of the appellant claimant is considered at Rs.5000/- and thus, the appellant claimant is entitled for amount of Rs.5500/- for loss of actual income.

14. The appellant claimant has deposed that he had undergone operations in various hospitals twice or thrice and even rods were inserted in his thigh and also in the right knee. Further, he is not in a position to move his right shoulder as was before performing the operations. He remained under the treatment in various hospitals for substantially long period. Witness Dr. Anant Kulkarni has also deposed that the appellant claimant was indoor patient in his hospital and accordingly he has issued discharge certificates Exh.34 and 35 respectively. In view of above, the appellant claimant is entitled for amount of Rs.1,00,000/- towards pains and sufferings.

15. So far as the medical expenses are concerned, it is true that the appellant claimant has not proved the medical bills of various hospitals, however, the appellant claimant has produced on record the printed cash bills of medicines purchased from medical shops and most of them

are located in the hospital premises, where he remained under treatment. Though the medical bills issued by the hospital cannot be considered for want of proof, the appellant claimant is entitled for medicine purchased by him from medical shops for which the said shops issued cash memo. Considering the said medical bills, the appellant claimant is entitled for amount of Rs.2,00,000/-.

16. The appellant claimant has deposed that he remained under treatment in various hospitals as an indoor patient and he had incurred expenses for keeping attendant and also required to spend on conveyance etc. Considering the period of treatment and the fact that the appellant claimant has taken treatment in various hospitals, it would be just and appropriate to grant Rs.70,000/- towards attendance and conveyance charges and further Rs.20,000/- for special diet and nutrition during the said period of treatment. The appellant claimant is also entitled for amount of Rs.50,000/- towards loss of amenities in future life. As opined by witness Dr. Anant Kulkarni, the appellant claimant had restriction on movement in his right leg and right shoulder. So far as the future medical expenses are concerned, the appellant claimant has not deposed anything about it. Witness Dr. Anant Kulkarni has not specified in his evidence that the appellant claimant requires future medical treatment on some count.

17. In view of the above discussion, the break-up of compensation

under different heads, which can be broadly categorized as under:-

a) Loss of future income (60,000x17)	Rs.10,20,000.00
b) Loss of actual income	Rs. 5,500.00
c) Pains and sufferings	Rs. 1,00,000.00
d) Medical expenses	Rs. 2,00,000.00
e) Attendance and conveyance charges	Rs. 70,000.00
f) Special diet and nutrition	Rs. 20,000.00
g) Loss of amenities in future life	Rs. 50,000.00

	Total Rs. 14,65,500.00
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18. Thus, the appellant claimant is entitled for total compensation of Rs.14,65,500.00 (Rupees Fourteen lacs sixty five thousand five hundred only) with interest @ 9% p.a. from the date of application till realization of entire amount. In view of above, I proceed to pass the following order:-

O R D E R

- I) The appeal is hereby partly allowed.

- II) The judgment and award dated 7.2.2015 passed by the learned Member, M.A.C.T. Bhoom, in M.A.C.P. No. 33 of 2014 is hereby modified in the following manner:-

“The respondent Nos. 1 and 2 are hereby directed to pay compensation of Rs.14,65,500/- (Rupees Fourteen lacs sixty five

thousand five hundred only) jointly and severally to the claimant alongwith interest @ 9% p.a. from the date of petition till its realization".

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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