

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1499 OF 2012

Chhabu Genu Berad
Age 42 years, Occ. At present nil,
R/o. Darewadi, Tal. Ner,
Dist. Ahmednagar.

.. Appellant.

Versus

1] M/s. Transway Cargo Lifters Pvt. Ltd.,
54, Sector 16A, Faridabad.

2] National Assurance Company,
Manager, National Assurance Co.,
Ambar Plaza Building,
Station Road, Ahmednagar.

.. Respondents.

...

Mr. N.C. Garud, Advocate for appellant.
Mr. Avinash Borulkar, Adv. for respondent No.1.
Mr. S.P. Chapalgaonkar, Adv. for respondent No.2.

CORAM : K.K. SONAWANE, J.

RESERVED ON : 23rd November, 2017.

PRONOUNCED ON : 20th December, 2017.

JUDGMENT :-

1] The appellant - Chhabu Berad preferred the present appeal by resorting to the remedy under section 173 of the Motor Vehicles Act, 1988 (for short Act of 1988) and agitated the quantum of compensation amount, determined by the MACT, Ahmednagar in the proceeding of MACP No. 396 of 2006, vide judgment and order dated 9.4.2010. The appellant is seeking enhancement of compensation awarded by the MACT for his permanent

physical disability caused during the vehicular accident in this case.

2] It has been alleged that on 26.3.2006, the appellant/original claimant was returning to his village Darewadi from Ahmednagar on his motor-bike. During the relevant period, the vehicle truck bearing Registration No.HR-38/J-5335, came speedily from the opposite direction from Ahmednagar-Solapur Road and while overtaking another vehicle, gave dash to the motor-bike of the appellant/claimant. The appellant claimant sprawled on the ground, and sustained serious injuries to his right leg, knee joint, right thigh and hip joint. He was immediately escorted to the hospital at Tarakpur, Ahmednagar. He was hospitalized for considerable period. The surgeries were performed on the appellant/claimant for his injuries. He incurred huge medical expenditure to the tune of Rs. 3 Lakhs. According to appellant/claimant, the alleged vehicular accident was caused only due to rash and negligent driving on the part of the driver of offending vehicle. The respondent No.1 was the owner and respondent No.2 was the insurer of vehicle truck involved in the accident. The applicant was doing messon work for eking livelihood. He was earning Rs. 250/- per day but due to the physical infirmity there was a pecuniary loss to the claimant.

3] After alleged accident, information was passed on to the concerned police of Bhingar Camp Police station, Ahmednagar. Police immediately arrived on the spot and drawn panchanama of scene of occurrence. Police registered the offence against driver of the truck. According to claimant, in the vehicular accident, he sustained physical

disability due to which there was financial loss to him. Therefore, he moved an application under Section 166 of the Act of 1988 and claimed compensation of Rs. 4 Lakhs for the alleged physical disability caused due to accident involving the vehicle of respondent No.1.

4] In response to notices, the respondent No.1 - owner of the offending vehicle appeared before the Tribunal and resisted the claim put forth on behalf of claimant. The respondent owner of the vehicle denied the allegation of rash and negligent driving on the part of driver of the truck. The respondent also denied about the nature of injuries sustained to the claimant as well as the amount of medical expenditure incurred by him. The respondent No.2 also filed the written statement Exh.16 and opposed the contentions propounded on behalf of claimant. According to insurer, the driver was not at all responsible for the alleged accident resulting into serious injuries to the claimant.

5] After considering rival submissions, the Tribunal framed the requisite issues and proceeded further to determine the matter in issue on merit. In support of claim, the appellant claimant adduced his evidence on record at Exh.23. He also produced the voluminous documents on record comprising the police papers i.e. FIR, spot panchanama etc. on record. The claimant also produced documents of his medical treatment including the medical bills etc. The respondents did not adduce any evidence in support of their claim. The driver of the offending vehicle was also not examined by

the respondents to establish the circumstances about the occurrence of alleged accident. In the result, the Tribunal arrived at the conclusion that alleged accident was caused due to rash and negligent driving of the offending vehicle. Accordingly, the tribunal imposed monetary liability jointly and severally on the respondent Nos. 1 and 2 and directed to pay compensation to the tune of Rs. 2,25,000/- towards the physical disability caused to the claimant.

6] The learned counsel for the appellant vehemently submitted that the impugned judgment and award of the Tribunal is erroneous, illegal and not within the ambit of law. The Tribunal did not appreciate the evidence of PW-3 Savita Deokar - Medical shop owner to prove the medical bills below (Exh.81/1 to 81/36) and caused injustice to the claimant. The Tribunal ought to have considered these medical bills while calculating the quantum of compensation amount payable to the claimant. The Tribunal has considered the medical bills worth Rs. 1,62,771/-. But while calculating the final quantum of compensation amount, the Tribunal calculated the medical bills only worth Rs. 1,21,761/-. The error on the part of Tribunal is essential to be rectified. The learned counsel further harped on the circumstances that the income of claimant being a skilled labour was not considered in its proper perspective by the Tribunal. The claimant was eking livelihood by doing the labour work as a messon. He was a skilled worker and he used to earn Rs.250/- per day but the Tribunal did not pay any heed to the contentions put forth on behalf of claimant and calculated the quantum of

compensation by appreciating the notional income of Rs. 3,000/- in this case. According to learned counsel, the claimant produced the medical certificate to show the gravity of his physical disability. The medical certificate reflects 25% physical disability but the Tribunal did not appreciate the same and arrived at the conclusion that the physical disability of the claimant was not less than 10 to 15%. The learned counsel for the appellant submits that the findings expressed by the Tribunal are totally illegal, imperfect and not as per law. More amount of compensation ought to have been awarded to the claimant. Therefore, he prayed for enhancement of compensation determined by the Tribunal in this appeal.

7] The learned counsel for respondent Insurance company raised objection to the contentions propounded on behalf of appellant/original claimant. He supported the findings of Tribunal and asserted that the quantum of compensation determined by the Tribunal was just, proper and reasonable one.

8] After giving anxious consideration to the arguments advanced on behalf of both sides, as well as findings expressed by the Tribunal, it reveals that the circumstances of occurrence of alleged accident resulting into serious fracture injuries to lower limb of claimant was not put into controversy on behalf of both sides. The Tribunal considered that the alleged mishap was occurred due to rash and negligent driving of the vehicle truck by its driver. The Tribunal finally concluded that the respondent i.e.

owner and the insurer of the offending vehicle are liable to pay Rs. 2,25,000/- jointly and severally to the claimant, for the financial loss caused to him, following painful physical injuries resulted into permanent disability. The respondent No.1 owner of the vehicle or the respondent No.2 Insurance company did not agitate the findings of the Tribunal by resorting to remedy under Section 173 of the Motor Vehicles Act, by filing appeal before the High Court. However, claimant seeks enhancement of compensation awarded by the Tribunal in this appeal.

9] Admittedly, the claimant, in support of claim, adduced his evidence on oath. He has also examined PW-2 Sagar Nisal - his employer and PW-3 Savita Deokar - Medical shop owner. The claimant claimed that he was doing the labour work as a masson with PW-2 Sagar Nisal and he is earning Rs.250/- per day from his labour work. Unfortunately, there was no document produced on record to show that the income of claimant was Rs. 250/- per day from his skilled labour work as a messon. He attempted to adduce the evidence PW-2 Sagar Nisal - builder, but his evidence appears cryptic and scanty in nature. He failed to produce any reliable document to establish his credibility in regard to the employment of claimant as a messon. Moreover, it has brought on record in his evidence, that the claimant used to get remuneration on daily wages basis and in case of his absence, he would not get any wages on that day. In such circumstances, in absence of any concrete evidence. It would difficult to ascertain the exact number of working days of claimant in a month. The tribunal has rightly

proceeded to calculate the quantum of compensation amount, on the basis of notional income of Rs. 3,000/- p.m. in this case. The circumstances do not permit to cause any interference in the findings of Tribunal at the instance of appellant.

10] The learned counsel for the appellant, laid much more emphasis on the medical bills produced on record (Exh.89/1 to 89/36) and submits that the Tribunal has erroneously refused to consider these bills for calculating the quantum of compensation amount. The claimant examined PW-3 Savita Deokar, Medical shop owner in this case. But her evidence do not advance to the theory propounded on behalf of claimant to prove the medical bills (Exh.89/1 to 89/36). The PW-3 Savita Deokar was not the signatory of these bills, nor she was able to identify the person from her shop who appended signature on these bills. She was not present at the time of issuance of these bills. Moreover, in cross-examination, it has brought on record that all these bills were issued from one and the same bill book since 26.3.2006 to 13.4.2006 in the name of claimant only. The bill book was not utilized for selling the medicines to other customers. The factum of bills issued alone in the name of claimant from entire bill book created doubt about its genuineness. Obviously, the Tribunal found reluctant to keep reliance on these bills while calculating the quantum of compensation amount in favour of claimant. The findings expressed by the Tribunal appears just, proper and reasonable. Therefore, there is no propriety to appreciate these medical bills produced on record vide Exh.(89/1 to 89/36).

The Tribunal has rightly discarded the same while calculating the quantum of amount of compensation.

11] The claimant vociferously opposed the findings expressed by the Tribunal ignoring the disability certificate produced on record at (Exh.86). It has been asserted that the Tribunal ought to have considered the 25% permanent disability of claimant as determined by the medical officer concerned vide certificate Exh.86. The Tribunal committed error and arrived at the conclusion that the disability was not less than 10 to 15%.

12] The minute scrutiny of the findings of tribunal reflects that the Tribunal has appreciated the circumstances on record in its proper perspective. The claimant did not examine the medical officer, who has issued the disability certificate. The Medical Officer did not come forward to explain the circumstances on what basis he had calculated 25% permanent disability of the claimant. It was not known that whether he was competent to issue the certificate. The claimant did not unfurl all these circumstances by adducing evidence of concerned medical officer to prove that his permanent disability was not less than 10 to 15% but it was 25%, as ascertained by the Medical Officer vide Exh.86. The Tribunal has correctly relied upon the judicial pronouncement of the Honourable Apex Court in the case of ***Rajesh Kumar @ Raju Vs. Yudhvir Singh and another (2008) 7 SCC 308*** in which, Their Lordships of Apex Court dealt with similar situation and observed in para. 11 as under :-

“11. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the Hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time.”

13] On the touchstone of aforesaid judicial pronouncement, it would be cumbersome to appreciate the gravity of permanent disability of claimant to the extent of 25%. The mere production of document of medical certificate (Exh.86) on record, without any evidence to prove its contents relating to physical disability in question would not sub-serve the purpose. The claimant did not examine its author. The claimant failed to explain circumstances on the basis of which, permanent disability of 25% came to be calculated in this case. Therefore, the findings of Tribunal discarding medical certificate (Exh.86) and appreciating the nature of injuries for physical disability not less than 10 to 15% found justifiable and reasonable one. The mode and manner in which the Tribunal dealt with the quantum of compensation amount in this case, would be appreciable and considerable one. Therefore, no interference is warranted in the findings expressed by the Tribunal.

14] Eventually, the learned counsel for the appellant drawn attention of this Court towards the error committed by the Tribunal while calculating the final figure of quantum of compensation payable to the claimant. It has been submitted that while appreciating the medical bills (Exh.87/1 to 87/52) , the Tribunal concluded that the claimant is entitled to get total sum of Rs.1,62,271/- towards expenses of medical bills (Exh.87/1 to 87/52), but while calculating final quantum of compensation amount, inadvertently, the Tribunal taken into consideration figure of Rs.1,21,761/- instead of Rs.1,62,271/-. This would cause loss of Rs.42,761/- to the claimant. Therefore, he requested to rectify the same and allow the claimant to get more compensation amount of Rs.42,761/- than the amount already awarded by the Tribunal. The learned counsel for respondent insurance company also fairly conceded for same and shown inclination for requisite rectification.

15] After due verification of arithmetical calculations, carried out by the Tribunal as well as findings of the Tribunal pertains to the compensation amount payable to the claimant, on the basis of medical bills (Exh.87/1 to 87/52), as observed in the award at para. No.9, the Tribunal has mentioned that the claimant is entitled to get total sum of Rs.1,62,761/- towards medical bills produced on record vide (Exh.87/1 to 87/52). But, while calculating the final figure of quantum of compensation, in para.14, inadvertently, the Tribunal taken into consideration the sum of

Rs.1,21,761/-, instead of Rs. 1,62,761/- and arrived at the conclusion that the claimant is entitled to get total sum of Rs.2,24,761/- i.e. Rs.2,25,000/- in this case. Definitely, it would cause loss of Rs. 42,761/- to the claimant. Therefore, the mathematical error in the calculation of the Tribunal carried out for determination of final quantum of compensation is required to be rectified. After considering total sum of Rs.1,62,761/- towards medical bills, the compensation amount is essential to be calculated at Rs. 2,65,761/- instead of Rs.2,25,000/-, as determined by the Tribunal. Hence, present appeal is to be partly allowed to that extent.

16] Accordingly, the appeal stands partly allowed. The impugned judgment and award passed by the learned Tribunal dated 9.4.2010 In MACP No. 396 of 2006 is hereby modified to the extent that the total sum of medical bills (Exh. 87/1 to 87/52) shall be calculated @ Rs. 1,62,761/- instead of Rs. 1,21,761/- and the claimant is hereby entitled to get compensation for his physical disability to the tune of Rs. 1,65,761/- + Rs.81,000/- for pecuniary loss + Rs. 22,000/- for diet, attendance and conveyance charges = Rs. 2,65,761/- rounded to Rs. 2,66,000/- towards total sum of compensation payable to the claimant. The claimant has already received the sum of Rs.25,000/- towards no fault liability.

17] The respondent Nos. 1 and 2 shall pay the aforesaid total sum of Rs. 2,41,000/- to the claimant instead of Rs. 2,00,000/- in addition to Rs.25,000/- already paid under no fault liability with interest @ 7.5 % p.a.

from the date of petition i.e. 28.8.2006 till realization of the entire amount.

Rest of the award is hereby made confirmed and absolute.

18] The appeal stands disposed of accordingly in above terms.

[K.K.SONAWANE, J]

grt/-