

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 576 OF 2002

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Hanmant s/o Kishanrao Boienwad,
age 22 yrs, Lunatic i.e. mentally
disabled person through natural
Guardian mother Hulanbai w/o
Kishanrao Boienwad, age 55 yrs,
Occ. Household, R/o Hotala,
Post Narsi, Tq. Biloli, Dist. Nanded. Appellant.
Orig claimant.

VERSUS

1. Maharashtra State Road Transport
Ltd., Bombay through its Divisional
Controller, Divisional Office, Workshop
Nanded.
2. Ganesh s/o Rakaji Dugane,
age major, Occ. Business,
Second Address
Ganesh s/o Rakaji Dugane,
age major, Occ. Business and
Owner of Jeep No.MH-21/A-8732.
R/o Mudgaon, Tq. Biloli, Dist. Nanded.
3. The Manager,
The New India Assurance Co., Ltd.,
Branch Office, Shivaji Chowk,
Jalna, Tq. & Dist. Jalna. Respondents.
Orig respondents.

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Advocate for Appellant : Mr V D Patnoorkar
Advocate for Respondents : M K Goyanka for R/1,
Mr S P Koli h/f V N Upadhye For R/3.

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CORAM : V.K. JADHAV, J.
Dated: February 09, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the common judgment and award passed by the Ex-officio Member, Motor accident Claims Tribunal, Nanded dated 27.3.2001 in MACP No.90/1996 alongwith other connected motor accident claim petitions, the original claimant in MACP No.125/1996 preferred this appeal to the extent of quantum alone.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 27.10.1995 the appellant Claimant Hanmant and two more persons were travelling in a jeep vehicle bearing registration No.MH-21/A-8732. They boarded in the jeep vehicle at village Narsi and thereafter, proceeding in the direction of village Degloor so as to reach village Borgaon. On way at about 11.30 a.m. one S.T.Bus bearing registration No.MH-20/D-946 came from opposite direction in a very fast speed and in zigzag manner. The driver of the S.T Bus had lost his control over the steering wheel and thus gave dash to the driver side of the jeep vehicle. In consequence of which, one

person died and the appellant claimant Hanmant had sustained head injury and other injuries on the part of his body. Third passenger had also received injuries.

b] The appellant claimant has preferred MACP No.125/1996 before the MACT Nanded for grant of compensation under various heads. It has contended that, the appellant claimant Hanmant was taking education at the time of accident and he has become permanently disabled as a result of the accident. The appellant claimant has lost his memory, cannot think normally as his expression power is also impaired. He could not continue his further education. He is unable to maintain his personal affairs. The appellant claimant had taken treatment in various hospitals and accordingly incurred huge expenses. The appellant claimant has thus claimed compensation of Rs.4,50,000/- on all counts.

c] Claim petition is strongly resisted by the respondents by raising grounds that the driver of the other vehicle is responsible for the accident. The learned

Member of the Tribunal has recorded finding that the appellant claimant suffered permanent disablement on account of rash and negligent driving of driver of the S.T. Bus as well as rash and negligent driving of the driver of the jeep. The learned Member of the Tribunal, after considering the oral and documentary evidence adduced by the parties, held that appellant claimant Hanmant is entitled for an amount of Rs.2.00 lakh and accordingly directed the respondents no. 1 to 3 to pay said compensation amount alongwith interest @ 9% p.a. Being aggrieved by the same, the appellant claimant Hanmant has preferred this appeal to the extent of quantum. The respondent MSRTC, owner and insurer of the vehicle jeep have not preferred any appeal or cross objection.

3. The learned counsel for the appellant-claimant submits that, the appellant claimant has lost his memory for past events. He had suffered a subdural haematoma with cerebral hemorrhage with fracture of right parietal bone. He has also suffered from dysarthria i.e. defect in speech. Learned counsel submits that, the

claimant could not continue his further education and his future day to day activities have been affected severely though Medical Officer has issued permanent disablement certificate Exh.54 certifying therein that appellant claimant has permanent disablement to the extent of 25%. Witness Dr. Sudam Muneshwar has also deposed that, it is a complex phenomenon and there is no particular way to determine percentage of disablement in this case. Learned counsel submits that the Tribunal has not considered the same and awarded a very meager amount of compensation of Rs.1,60,000/- as a compensation for loss of memory, loss of future opportunities of earning his livelihood and partial loss of the natural enjoyment of life. The learned Member of the Tribunal has also awarded a very meager amount of Rs.25,000/- for medical expenses. The appellant claimant was not in a position to depose before the Tribunal and his mother who is illiterate and rustic lady deposed before the Tribunal. It is a matter of record that the appellant-claimant Hanmant was referred to Medical Hospital, Nanded and also at Hyderabad and Mumbai for his treatment on account of brain injury

sustained by him. Even though, appellant claimant could not produce medical bills, considering his suffering and fact that his mother is illiterate and rustic lady, the Tribunal should have awarded more compensation under the head of medical expenses, diet and conveyance charges. The learned Member of the Tribunal has not considered the marriage prospectus of the appellant claimant and has not awarded any amount of compensation under that head. The learned Member of the Tribunal ought to have awarded a separate amount on account of disablement sustained by the appellant.

4. Learned counsel for respondent -MSRTC submits that, witness Dr. Sudam Muneshwar has issued the certificate of permanent disablement Exh.54, certifying there in that the appellant-claimant is suffering from permanent disability to the extent of 25%. The appellant claimant was taking education when he met with the accident. He was non-earning member of the family. Thus, considering the same, the learned Member of the Tribunal has awarded just and reasonable

compensation. Learned counsel submits that, even the Tribunal has also observed that the appellant-claimant can walk and do his normal activities. Learned Member of the Tribunal has considered medical bills placed on record and even though bills are not of the amount of Rs.25,000/- awarded compensation of Rs.25,000/- under the head of medical expenses. The learned Member of the Tribunal has awarded just and reasonable compensation under the non-pecuniary heads. No interference is required in the impugned judgment and award. The learned counsel submits that though accident had taken place way back in the year 1996, the learned Member of the Tribunal has awarded interest at the rate of 9% instead of 6%.

5. Learned counsel for respondent insurer submits that, the Tribunal has awarded just and reasonable compensation and there is no substance in the appeal. Thus, the appeal is liable to be dismissed.

6. On careful perusal of the evidence adduced by the appellant claimant and impugned judgment and award,

it appears that mother of the claimant witness no.1 Hulanbai has deposed that after the accident, her son claimant Hanmant was taken in the Government Hospital, Nanded for treatment. As per the advise given by the Medical Officer at Government Hospital, Nanded, the appellant claimant was shifted to Hyderabad for special treatment. He was admitted in Osmaniya Hospital at Hyderabad. The claimant Hanmant treated there as indoor patient for eight days. He was also operated in the said hospital. She has further deposed that medical officer at Hyderabad advised further treatment, however, due to financial crunch she could not continue said treatment at Hyderabad. Accordingly, she brought her son claimant to Nanded for further treatment. She has further deposed that, the appellant claimant Hanmant lost his memory. He cannot think normally and his behaviour is abnormal. Even again her son was referred to J.J.Hospital, Mumbai for medical treatment. She had produced on record medical papers including the reference letter issued by Medical Officer, Government Hospital, Nanded.

7. On perusal of the evidence of witness Dr. Sudam Muneshwar, it appears that he has issued certificate of permanent disablement exh.54 certifying therein that, the appellant claimant has sustained permanent disablement to the extent of 25% on account of fracture of right parietal bone along with subdural haematoma with cerebral hemorrhage. However, he has further deposed in his oral evidence that due to disability the appellant claimant has suffered loss of brain cells and same has caused hindrance in his day to day life. He has further given opinion that, it is difficult for the appellant to continue his further education. According to him, the appellant-claimant would not be able to interpret the things and therefore, his future activities are likely to be affected. He has further given his opinion that, it is a complex phenomenon and there is no particular way to determine the percentage of the disability in this case. The appellant-claimant is not a normal person as far as thinking process is concerned, and he is not a sound person in his opinion. There is nothing in the cross examination to discard this expert's opinion or to draw any other inference.

8. On the backdrop of this, it appears that, the learned Member of the Tribunal has considered only actual percentage of disablement as mentioned in the certificate exh.54 and awarded a meager compensation of Rs.1,60,000/- on almost all counts. Furthermore, though, the appellant-claimant had taken treatment at Nanded, Hyderabad and Mumbai, the learned Member of the Tribunal has awarded compensation amount of Rs.25,000/- only for medical expenses and Rs.5,000/- for diet etc.

9. The appellant-claimant has lost his power to understand and interpret the things. He has lost memory for past events. He is not able to think as normal person. His future activities are affected and he could not continue his further education. Considering the same, the appellant-claimant is entitled for an amount of Rs.**2,00,000/-** (Rs. Two lacs) on count of permanent disablement as certified by witness Dr. Sudam Muneshwar and further consequences of the said injury and disablement.

10. The appellant-claimant was taking education in 10th standard at the time of accident. He could not continue his education due to the remote consequences of head injury sustained by him in the accident. He has lost his future career. He would not be able to earn for himself, leave apart maintaining the family members. Thus, under the head of loss of future career, the appellant-claimant is entitled for a lump sum amount of Rs.**1,50,000/-**. The appellant claimant is also entitled for an amount of Rs.**1,00,000/-** for loss of his marriage prospectus. After accident, the appellant claimant had taken treatment in various hospitals as mentioned above. He was operated in Osmaniya Hospital, Hyderabad. He had undergone agony and pains. On the other hand, I must say that, he is not able to understand his agony and mental pain in past. The appellant-claimant is entitled for an amount of Rs.**1,00,000/-** (Rs. One lac) towards pains and sufferings and Rs.**50,000/-** for loss of amenities in future life. Though, medical bills are not produced on record, it is part of the record that, after the accident,

the appellant claimant had taken treatment at Osmaniya Hospital, Hyderabad and J.J. Hospital, Mumbai. Even mother of appellant claimant has deposed that she could not continue treatment of her son at Hyderabad due to financial crunch. The learned Member of the Tribunal has awarded a meager amount of Rs.25,000/- under the head of medical expenses and Rs.5,000/- for diet on the ground that medical expenses bills are not produced. The learned Member of the Tribunal has observed that mother of the appellant claimant is rustic and illiterate lady, the appellant-claimant is not in a position to remember any event and his day to day activities are also affected. Thus, considering the same, the learned Member of the Tribunal should have awarded some more amount under the above heads. The appellant claimant is thus entitled for amount of Rs.**75,000**/- for medical expenses, diet, conveyance and attendant charges.

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

1	Permanent disability	Rs.2,00,000/-
2	Loss of future career	Rs.1,50,000/-
3	Loss of Marriage prospectus	Rs.1,00,000/-
4	Pains and sufferings	Rs.1,00,000/-
5	Loss of amenities in future life	Rs.0,50,000/-
6	Medical expenses, diet, conveyance and attendant charges.	Rs.0,75,000/-
	TOTAL	Rs.6,75,000/-

11. The appellant claimant is entitled to the total compensation of Rs.6,75,000/-(Rs. Six Lacs seventy five thousand only) and the impugned judgment and award thus requires modification to that effect. Hence, following order.

O R D E R

- i. The appeal is hereby allowed with proportionate costs.
- ii. The Judgment and Award passed by the District Judge and Ex-officio Member, Motor accident Claims Tribunal, Nanded dated 27.3.2001 in MACP No.125/1996 Hanmant s/o Kishanrao Boienwad Vs. MSRTC and others, is hereby modified in the following manner :-

The claimant Hanmant do recover Rs.6,75,000/- (Rs. Six lakh seventy five thousand) from respondents no. 1 to 3 jointly

and severally alongwith proportionate costs and interest @ 6% p.a. from the date of petition till realization of the amount inclusive of 'no fault amount.'

- iii. Rest of the Judgment and award stands confirmed.
- iv. Award be drawn up as per the above modifications.
- v. The appellant claimant shall pay deficit court fees within four weeks from the date of this order.
- vi. Needless to say that if any amount is paid as per the earlier judgment and award passed by the Tribunal, the same shall be adjusted in the modified award.
- Vii. On depositing the amount, an amount of Rs.5.00 lakh shall be invested in joint names of appellant claimant Hanmant s/o Kishanrao Boienwad and his mother Hulanbai w/o Kishanrao Boienwad in fixed deposit receipt in any nationalized Bank for a period of five years and the appellant claimant or his mother Hulanbai are permitted to withdraw quarterly interest of the said Fixed deposit receipts, if required.
- Viii. Rest of the amount alongwith interest shall be paid to the appellant claimant Hanmant.

ix. Appeal is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-