

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 FIRST APPEAL NO. 1639 OF 2015

RANJANA MILIND GANDHI
VERSUS
SIKANDAR RAHEMAN BAGWAN AND OTHERS

WITH
FIRST APPEAL NO. 1640/2015

MILIND CHANDRAKANT GANDHI
VERSUS
SIKANDAR RAHEMAN BAGWAN AND OTHERS

...
Advocate for Appellants : N.G. Kale
Advocate for Respondents : Chapalgaonkar S.G.

...
CORAM : V.K. JADHAV, J.
DATE : 23-02-2017.

P.C. :

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the M.A.C.T. Ahmednagar dated 23.01.2015 in M.A.C.P. 71 of 2013, the original-claimant Milind has preferred first appeal no. 1640 of 2015 and being aggrieved by the judgment and award passed by the Member, M.A.C.T. Ahmednagar, dated 23.01.2015 in M.A.C.P. No. 120 of 2012, the original claimant Ranjana has preferred first appeal no. 1639 of 2015. Both the claims arise out of one and the same accident and both the claimants have preferred these two separate appeals against the two separate judgment and award passed by the Tribunal as aforesaid, to the extent of quantum alone.

3. The learned counsel for the appellants in both the appeal submits that, the tribunal has erroneously awarded the compensation for the permanent disablement sustained by the appellant-original claimants @ Rs. 2000/- per percentage of the disablement. The learned counsel submits that, the Tribunal has relied upon the judgment of this Court in first appeal no. 2598 of 2011. The learned counsel submits that, in the said appeal this Court has awarded the lump sum compensation of Rs. 40,000/- for the permanent disablement sustained by the claimants to the extent of 20%, however, this Court has not awarded the compensation percentage wise as observed by the tribunal. The learned counsel submits that, the claimant Milind had sustained the disablement to the extent of 75% and the claimant had examined witness Dr. D.S. Kiyawat to prove the contents of the disablement certificate which is in Comp. Form 'B', the said permanent disablement certificate is duly proved through the witness Dr. Kiyawat and marked at exhibit-44.

4. The learned counsel submits that, it is will settled that even though there is no loss of future income, the Tribunal can award the compensation for permanent disablement sustained by the claimant. However, the tribunal has awarded a very meagre amount for the permanent disablement which is to the extent of 75% as certified by the witness Dr. Kiyawat of Jahangir Hospital, Pune. The learned counsel submits that, the appellant-claimant

Milind, though, carrying out the business with the other partner, he would not be able to continue with the said business on account of the injuries sustained in the accident and the resultant disablement. However, the learned Member of the Tribunal has not considered the loss of future income. The learned counsel submits that, the Tribunal in both the claims has awarded a very meagre amount for non-pecuniary heads such as pains and sufferings, loss of amenities in future life, transport and special diet. It is a part of record that, after the accident both the claimants have undergone the operation and the rods were inserted. Both the claimants remained hospitalised for a considerable period and even though they have stated in their affidavit of evidence about the future medical expenses, the Tribunal has not awarded any compensation under the said head.

5. The learned counsel for the respondent-insurer submits that, so far as the claimant Milind is concerned, witness Dr. Kiyawat is not an orthopedic surgeon. He has admitted in his cross examination that he has no knowledge about the fracture injuries and the bones. The learned counsel has further pointed out that, in the permanent disablement certificate exhibit-44, witness Dr. Kiyawat has mentioned that "both hip, knee joint reduced to mobility and deformity leading to gross restriction and mobility and inability to ride scooter or do any travel, he has permanent disability of 75%". The learned counsel submits that, witness Dr.

Kiyawat has not given the specifications of the disablement sustained and further, not separately mentioned the disablement as per the injuries sustained by the claimant and its over-all effect at the time of issuance of the said certificate exhibit-44.

So far as, the permanent disablement in respect of the claimant Ranjana is concerned the same witness Dr. Kiyawat has issued the disablement certificate in Comp. Form 'B' and mentioned therein about the poor memory / concentration due to cerebral contusion and limping on right leg due to fracture right femur. The learned counsel submits that in case of the claimant Ranjala also Dr. Kiyawat has not specified the disablement percentage separately. The learned counsel submits that, on the basis of the permanent disablement certificate issued by witness Dr. Kiyawat, the Tribunal has rightly awarded the just and reasonable compensation under the head of permanent disablement. No interference is required. The learned counsel submits that, the Tribunal has also awarded just and reasonable compensation under the head of pains and sufferings etc. The learned counsel submits that, though, the claimants in both the claims had deposed about the future medical treatment, they failed to substantiate the same by adducing the evidence to that effect.

6. In both the claim petitions, the approach of the Tribunal is erroneous so far as the grant of compensation under the head of

permanent disablement is concerned. In case of claimant Milind, though, witness Dr. Kiyawat has not given specifications of the disablement, on perusal of the discharge summary exhibit-45, it appears that, as per the diagnosis recorded in the discharge summary the claimant Milind is suffering from Right femur IT with displaced M-L 1/3rd shaft with proximal tibia with punctured Grade-I commuted M 1/3rd shaft. Left femur – commuted supracondylar grade-II with left proximal tibia closed comminuted with sutured CLW post leg. On perusal of the said discharge summary, it further appears that, patient Milind was treated for his right knee with femur (portable) fracture lower end of right femur, then for, right hip with femur with the observations that, undisplaced intertrochanteric fracture right femur with fixatory devices in situ. minimally displaced fracture with lower third shaft of right femur with internal flexitory device in situ and a leg having displaced comminuted fracture, mid shaft of right tibia with internal fixatory devices and also observed the follow up treatment. It further appears from the said discharge summary exhibit-45 that, he had undergone the operation and subjected to the investigation and treatment as detailed in the discharge summary.

7. Similarly, the discharge summary of claimant Ranjana is placed on record and the same is marked at exhibit-49. As per the said discharge summary the diagnosis R.T.A. with shock with right femur. She was also subjected to various investigations and

operation. She was also advised about the follow up treatment. Witness Dr. Kiyawat has also opined that on account of the injuries sustained by claimant Ranjana on her head, there is loss of memory and also the restrictions on the movement of the left leg. She is suffering from poor memory, concentration, due to cerebral contusion.

8. Thus, considering the discharge summary in both the claim petitions, it appears that, the Tribunal has awarded a meagre amount under the head of permanent disablement. Thus, considering the permanent disablement, its nature and the remote consequence as detailed by witness Dr. Kiyawat and as reflecting from the discharge summary, in the case of the claimant Milind, it would be just and appropriate to award the compensation under the head of permanent disablement to the tune of Rupees Three Lakhs and Rupees Two Lakh Fifty Thousand in the case of Ranjana.

9. So far as, the pains and sufferings of both the claimants are concerned, The tribunal has awarded a meagre amount of Rs. 25,000/- each. Considering the investigation carried out in the said hospital at Pune, the operations underwent by both the claimants and the treatment given to them in the said hospital, it would be just and appropriate to award Rupees One Lakh each to them for pains and sufferings. The claimants in both the claim petitions are also entitled for an amount Rs. 75,000/- for loss of amenities in

future life. They are also entitled for an amount of Rs.25,000/- each for transport and special diet respectively. Furthermore, the claimant Milind has claimed an amount of Rs.80,000/- for future medical treatment and the claimant Ranjana has claimed Rs. 50,000/- for her future medical treatment. After considering the discharge summary in both the cases, I find it just and appropriate to award the compensation for future medical treatment as claimed by both the claimants.

10. The learned counsel for the appellant-claimants has conceded that, the Tribunal has awarded the just and reasonable compensation for the medical expenses incurred by both the claimants. So far as, the loss of future income is concerned both the claimants have admitted in their cross-examination that there is no loss of future income and further looking into the nature of their business, I do not think that there is any loss of future income as such. The claimants in both the claim petitions are not entitled to claim any compensation under that head.

11. In view of the above discussion, the break-up of compensation under the different heads which can be broadly categorised is as under:

In the case of Milind (First appeal no. 1640 of 2015)	
Permanent disablement	Rs. 3,00,000/-
Medical bills (as awarded by the tribunal)	Rs. 5,94,621/-
Pains and sufferings (as against Rs. 25,000/- awarded by the tribunal)	Rs. 1,00,000/-

Loss of amenities in future life (as against Rs. 25,000/- awarded by the tribunal)	Rs. 75,000/-
Transport (as against Rs. 10,000/- awarded by the tribunal)	Rs. 25,000/-
Special diet (as against Rs. 10,000/- awarded by the tribunal)	Rs. 25,000/-
Future medical expenses	Rs. 80,000/-
Total	Rs. 11,99,621/-

In the case of Ranjana (First appeal no. 1639 of 2015)	
Permanent disablement (as against Rs. 70,000/- awarded by the tribunal)	Rs.2,50,000/-
Medical bills (as awarded by the tribunal)	Rs. 1,32,887/-
Pains and sufferings (as against Rs. 25,000/- awarded by the tribunal)	Rs. 1,00,000/-
Loss of amenities in future life (as against Rs. 25,000/- awarded by the tribunal)	Rs. 75,000/-
Transport (as against Rs. 10,000/- awarded by the tribunal)	Rs. 25,000/-
Special diet (as against Rs. 10,000/- awarded by the tribunal)	Rs. 25,000/-
Future medical expenses	Rs. 50,000/-
Total	Rs. 6,57,887/-

12. Thus, the appellant claimants are entitled for a total compensation as worked out herein-above. The judgment and award passed by the Tribunal, thus requires modification. Hence I proceed to pass the following order.

ORDER

- i) First Appeal no. 1640 of 2015 is hereby partly allowed with proportionate costs. The judgment and award passed by the M.A.C.T. Ahmednagar dated 23.01.2015 in M.A.C.P. No. 71 of 2011 is hereby modified in the following manner.

- ii) The respondent nos. 1 and 2 jointly and severally are directed to pay the compensation of Rs. 11,99,621/- (Rupees Eleven Lakhs Ninety Nine Thousand Six Hundred and Twenty One Only) inclusive of the claim of Rs. 25,000/- under Section 140 of the Motor Vehicles Act along with interest @ 7.5% per annum from the date of application till realisation.
- iii) First Appeal no. 1639 of 2015 is hereby partly allowed with proportionate costs. The judgment and award passed by the M.A.C.T. Ahmednagar dated 23.01.2015 in M.A.C.P. No. 120 of 2012 is hereby modified in the following manner.
- iv) The respondent nos. 1 and 2 jointly and severally are directed to pay the compensation of Rs. 6,57,887/- (Rupees Six Lakhs Fifty Seven Thousand Eight Hundred and Eighty Seven Only) inclusive of the claim of Rs. 25,000/- under Section 140 of the Motor Vehicles Act along with interest @ 7.5% per annum from the date of application till realisation.
- v) The rest of the judgment and award passed by the Tribunal in both the claim petitions stand confirmed.
- vi) Award be drawn up in both the claim petitions as per the above modification.
- vii) Needless to say that, if any, compensation is paid as per

the award passed by the Tribunal, the same shall be adjusted in the award as modified above.

viii) Both the appeals are accordingly disposed of.

(V.K. JADHAV)
JUDGE