

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1597 OF 2015

VINOD GOROBA WAGHMODE
VERSUS
VIVEK MADHAVRAO REDDY AND ANOTHER

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Advocate for Appellant : Mr. Manale Satish S
Advocate for Respondent-insurer : Mr. M.M. Ambhore

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CORAM : V. K. JADHAV, J.
DATED : 6th JUNE, 2017

PER COURT:-

1. Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Latur dated 4.4.2015 in M.A.C.P. No. 63 of 2009, the appellant-original claimant preferred this appeal to the extent of quantum.

2. Learned counsel for the appellant submits that the injury sustained by the appellant resulted into permanent disablement to the extent of 100%. The appellant is suffering from quadriplegia. The appellant was working as wireman (motor rewinding) in a private company viz. Deepak Electrical at Latur on monthly salary of Rs.4000/-. The appellant has examined his colleague Baliram More as witness at Exh.44. The learned Member of the Tribunal has ignored the oral evidence of the appellant and his witness and erroneously considered the notional income of the appellant at

Rs.3000/- p.m. instead of Rs.4,000/- p.m. Learned counsel submits that the appellant has examined witness No.2 Arun Kumar Rao, Orthopedic surgeon at Latur. He has opined that appellant has suffered quadriplegia and thus he has suffered permanent disablement to the extent of 75%. The claimant would require crutches for walking and he would be unable to do any job because he lost the power of grips. Learned counsel submits that the quadriplegia is a paralysis of the body from neck downward. However, the learned Member has not awarded any compensation for permanent disablement in the above form, suffered by the appellant. Learned counsel submits that the Tribunal has awarded a very meager amount under non pecuniary heads, such as pains and sufferings, loss of amenities in future life, attendant charges etc. So far as the impugned judgment and award exonerating the respondent insurer is concerned, the learned counsel for the appellant has not made any submissions and accepted the findings recorded by the Tribunal in this regard.

3. Learned counsel for the appellant, in order to substantiate his contentions, placed reliance on the following judgments:-

- I) Sanjay Verma vs. Haryana Roadways, reported in 2014 (1) CPSC46
- ii) Dattatraya Laxman Shinde (Dr) vs. Nana Raghunath Hire

and others, reported in 2011 (6) Bom.C.R. 553

iii) New India Assurance Company Limited vs. Shruti Madhukar Panchal and another, reported in 2014 (2) Bom.C.R. 51.

4. Though respondent No.1-original owner duly served, none appears for him. It would not be out of place to mention here that the respondent No.1-owner remained absent before the Tribunal and initially award passed by the Tribunal came to be quashed and set aside by this court and remanded the matter to the Tribunal for fresh consideration. Respondent original owner has thereafter subjected the claimant cross examination at length. However, even though the respondent owner is duly served, none appears for him before this court.

5. I have also heard the learned counsel for the respondent insurer.

6. I have carefully gone through the pleadings, evidence and the impugned judgment and award passed by the Tribunal. On perusal of the permanent disablement certificate, Exh.41, in Form COMP-"B", it appears that the concerned Orthopedic surgeon, who has issued the said certificate, has specifically mentioned the percentage of the

disablement to the extent of 75% in respect of whole of the body. Witness Dr. Arun Kumar Rao, Orthopedic surgeon, Latur has deposed that the claimant has suffered injury in cervical spine fracture and because of the said injury, the claimant has suffered quadriplegia. According to him, the claimant has also suffered fracture of lower end of radius left and fracture of left tibia. Witness Dr. Arun Kumar Rao is head of the department of Orthopedics of MIMSR College and Hospital at Latur. The appellant was admitted in his hospital on 20.3.2008 and discharged on 10.6.2008. It further appears from the evidence of Dr. Arun Kumar Rao that he has applied a "Mac Bride" formula for assessing the disability in this case. There is nothing in the cross examination of this witness to disbelieve this expert opinion or to draw any other inference. Needless to repeat here that quadriplegia means involvement of all four limbs. The learned Member of the Tribunal has however, not awarded any compensation for permanent disablement sustained by the appellant. It is well settled that even if the loss of future income is considered, the Tribunal in the appropriate cases may award the compensation for permanent disablement suffered by the claimant. In my opinion, this is the most appropriate case in which the Tribunal should have exercised its discretion to award the compensation separately to the claimant for having suffered permanent disablement like quadriplegia affecting the body below neck to the extent of 75%.

It would be just and appropriate in this case if an amount of Rs.1,75,000/- is awarded to the claimant under this head.

7. So far as the loss of future income is concerned, the appellant has deposed that prior to the accident he was doing the work of wireman in a private company and in order to substantiate his contentions, he has examined his one of the colleagues viz. Baliram More. However, the tribunal has not considered the said evidence and awarded the compensation by considering the notional income of the claimant at Rs.3000/- p.m. The claimant was working as wireman, which is a skilled job. His notional income cannot be considered as income of unskilled labour. Furthermore, I do not find any reason to discard the oral evidence adduced by the appellant in respect of his salary. The Tribunal ought to have considered his income of Rs.4,000/- p.m. The claimant is entitled for an amount of compensation towards loss of future income considering his income at Rs.4,000/- p.m.

8. It further appears that the Tribunal has awarded very meager amount towards pains and sufferings, loss of amenities in future life and attendant charges. The learned Member of the Tribunal has awarded Rs.20,000/- for loss of amenities in future life, Rs.40,000/- towards pains and sufferings and Rs.10,000/- as attendant charges.

9. In the case of ***New India Assurance Company vs. Shruti Madhukar panchal and Anr.*** (supra) relied upon by learned counsel for the appellant, the Division Bench of this court in identical case in para 36 of the judgment has made the following observations:-

“36. As regards the item of future medical expenses, the MACT awarded an amount of Rs. 22,00,000/-. There is no doubt from the evidence and material on record that the applicant is going to need continuous medical attention. Paraplegics and quadriplegics are particularly vulnerable to a host of infections and ailments. They require special beds, special attention and special treatment. Quadriplegia is a paralysis of the body from neck downward. Such a person is wholly dependent on extra and additional items of medical and personal care as he or she is quite unable to attend to her even most daily basic functions. There is no doubt that the claimant is going to incur ongoing medical expenses, including for water beds to prevent bedsores, catheters, feeding tubes, diapers, hand gloves etc. The MACT arrived at its award of Rs. 22 lakhs taking into account her need for 24-hour attention and care, medication and routine monthly expenses. In arriving at this figure, there is an element of guess work. The MACT took into account the claimants age and applied the multiplier of 18.”

10. In the case of ***Sanjay Verma vs. Harayana Roadways (supra)***, the Hon'ble supreme Court has also considered the case of claimant who suffered injury of spinal cord resulting in paralysis of his whole body and awarded the enhanced compensation.

11. In view of above discussion and in the identical case considered by this court as well as the Hon'ble Supreme court, it would be just and appropriate if the amount of Rs.3,00,000/- is awarded for pains and sufferings, Rs.1,50,000/- for loss of amenities in future life and Rs.4,00,000/- for attendant charges in future life. The claimant is also entitled for total amount of Rs.1,00,000/- for future medical expenses.

12. In view of above, the break up of compensation under various heads which can be broadly categorized is as under under:-

i)	Loss of future income (As against Rs.6,12,000/- awarded by the Tribunal)	Rs. 8,16,000.00
II)	Permanent disablement	Rs. 1,75,000.00
III)	Pains and sufferings (As against Rs.40,000/- awarded by the Tribunal)	Rs. 3,00,000.00
IV)	Loss of amenities in future life (As against Rs.20,000/- awarded by the Tribunal)	Rs.1,50,000.00
V)	Loss of attendant charges (As against Rs.15,750/- awarded by the Tribunal)	Rs.4,00,000.00
VI)	Future medical expenses	Rs.1,00,000.00
VII)	Medical expenses (As awarded by the Tribunal)	Rs. 32,600.00

VIII)	Conveyance (As awarded by the Tribunal)	Rs. 5,000.00
IX)	Special Diet (As awarded by the Tribunal)	Rs. 5,000.00

		Total Rs. 19,83,600.00
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13. Thus, the claimant is entitled for total compensation of Rs.19,83,600/-. The learned Member has awarded the interest @ 6% p.a. instead of 9%. However, the appellant-claimant is entitled for the aforesaid total amount with interest @ 9% p.a. from the date of petition till realization of the entire account. The impugned judgment and award therefore, requires modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby allowed with costs.
- II. The judgment and award dated 04.04.2015 passed by the learned Member, M.A.C.T. Latur in M.A.C.P. No. 63 of 2009 is modified in the following manner:-

“The appellant-claimant is entitled to compensation of Rs.19,83,600/- (Rupees Nineteen lacs eighty three thousand six hundred only) under section 166 of the Motor Vehicles Act 1988 inclusive of the amount of NFL, together with interest @ 9% p.a. from the date of petition i.e. from 25.02.2009 till realization of the amount”
- III. Rest of the judgment and award stands confirmed, including the

direction about the amount of compensation to be invested in fixed deposit and permission to withdraw the interest thereon.

- IV. Award be drawn up as per above modification.
- V. Deficit court fees, if any, be paid within a period of four weeks.
- VI. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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