

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2750 OF 2009

Syed Asgar s/o Syed Moosa,
age 28 year, Occupation labour,
Resident of Pedgaon, Taluka &
District Parbhani.

... **APPELLANT**
(Orig. Petitioner)

VERSUS

- 1) Shyam s/o Marotrao Gaikwad,
age major, Occupation business,
Resident of Khandala, Taluka
Hingoli at present Shivram Nagar
Parbhani.
- 2) United India Insurance Company
Limited, through its Branch Manager,
Parbhani.

... **RESPONDENTS**
(Orig. Respondents)

...
Mrs. A. N. Ansari, Advocate for Appellant.
Mr. V. R. Mundada and Mr. A. G. Kanade, Advocate for Respondent No.2.
...

CORAM : **V. K. JADHAV, J.**
DATE : 27th July, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by
the learned Member of the Motor Accident Claims Tribunal, Parbhani
dated 19th June, 2009 in MACP No.294 of 2008, the original Claimant

has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

2 The learned counsel for Appellant / original Claimant submits that the Appellant / Claimant has sustained the fracture of pelvis with complete disruption of urethra. The Appellant / Claimant has examined witness Dr. Umesh Mohan Bhalerao to prove the contents of permanent disablement certificate Exhibit 24, which is in Form Comp. 'B'. The Appellant / Claimant has duly proved the said permanent disablement certificate Exhibit 24 through witness Dr.Bhalerao. As per expert opinion of witness Dr.Bhalerao, who possess the qualification of M.B.B.S., M.S., D.N.B., D.Uro and the education of D.Uro from London, the Appellant / Claimant is suffering from permanent disablement to the extent of 25% in the form as detailed in the said permanent disablement certificate Exhibit 24. The learned counsel submits that as per the expert opinion of witness Dr.Bhalerao, due to the injuries sustained to urethra, the Appellant / Claimant requires CIC (Clean Intermittent Catheterisation). In the expert opinion of witness Dr.Bhalerao, the erection ability of the Appellant / Claimant is also lower down. The learned counsel submits that the Appellant / Claimant has also produced permanent

disablement certificate in Form Comp. 'B' Exhibit 55 issued by Medical Officer, Government Hospital, Parbhani wherein the unstable fracture of pelvis L/R left hip loss of abduction and the permanent disability is worked out as 15%. The learned counsel submits that though the Appellant / Claimant required to undertake the CIC daily and further suffering from such disablement, the learned Member of the Tribunal has considered the said 40% permanent disablement as a percentage for considering the loss of earning capacity. The learned counsel submits that the Appellant / Claimant has also examined witness No.4 Dr. Suryakant Anandrao Deshmukh. The learned counsel submits that the Appellant / Claimant was doing the labour work prior to the accident and considering the nature of disablement as explained by witnesses Dr.Bhalerao, Dr.Deshmukh and the permanent disablement as detailed in the permanent disablement certificates Exhibits 24 and 55, it is clear that the Appellant / Claimant would not be able to do the labour work in future. The Appellant / Claimant has lost his earning capacity in toto. However, the Tribunal has not considered the same. The learned counsel submits that the Tribunal has not awarded any compensation for loss of marital / sexual life. Even the Tribunal has not awarded any compensation for future medical expenses. The

learned counsel submits that the Appellant / Claimant has to undergo CIC daily for his remaining span of life and he is likely to face many complications in future and as such, the Tribunal ought to have awarded some reasonable compensation for future medical expenses. The learned counsel submits that the Tribunal has awarded very meager amount under the heads of pains and sufferings, special diet, attendant and transportation. The learned counsel submits that the Tribunal has awarded Rs.10,000/- only under all these heads. Further, the Tribunal has not awarded any separate compensation for the permanent disablement sustained by the Appellant / Claimant.

3 The learned counsel for Respondent / Insurer submits that so far as the permanent disablement as detailed in the permanent disablement certificate Exhibit 24 is concerned, the Appellant / Claimant can use the catheter to make his bladder empty and he can perform his day to day work including the labour work. The learned counsel submits that even witness Dr.Bhalerao has also admitted in his cross-examination that the Appellant / Claimant is maintaining himself. The learned counsel submits that so far as the permanent disablement as detailed in the permanent disablement certificate

Exhibit 55 is concerned, witness Dr.Deshmukh has deposed before the Tribunal that due to the injury sustained on the pelvis, the Appellant / Claimant cannot walk fast. The learned counsel submits that in view of the experts opinion and in the light of the permanent disablement recorded in the said permanent disablement certificates Exhibits 24 and 55 respectively, the Appellant / Claimant has not lost his earning capacity in toto. The learned Member of the Tribunal has therefore, rightly considered the said permanent of disablement as a percentage of loss of earning capacity and awarded just and reasonable compensation under the head of loss of future income. No interference is required so far as the compensation awarded under this head is concerned. The learned counsel submits that considering the evidence on record, the Tribunal has awarded near about Rs.87,000/- for medical expenses and awarded just and reasonable compensation under pains and sufferings, special diet, attendant, transportation charges etc. The learned counsel submits that there is no substance in the appeal and as such, the appeal is liable to be dismissed.

4 On careful perusal of the evidence and the impugned judgment and award passed by the Tribunal, most particularly the

evidence of witness Dr.Bhalerao and evidence of witness Dr.Deshmukh, it appears that the Appellant / Claimant is suffering from permanent disablement as detailed in the permanent disablement certificates Exhibits 24 and 55 respectively. Witness Dr.Bhalerao, who is an expert medical officer in D.Uro. has recorded in his permanent disablement certificate Exhibit 24 that there is complete disruption of the urethra. Needless to say that urethra is a tube in placental mammals that connects the urinary bladder to the urinary meatus for removal of fluids from the body. So far as CIC (Clean Intermittent Catheterisation) is concerned, the Appellant / Claimant is undertaking the said process himself. The said CIC is required to be done in a condition that affects the ability of a person to empty the bladder. It is well known that if you cannot fully empty your bladder, there would be a risk of urinary tract infection, damage of the kidney and many other complications. In order to carryout the said CIC, the person who is suffering from the said problem, is required to wash his hands, clean the area around the top of penis, lubricate the first several inches of catheter and insert into the urinary opening of the penis until it reaches to 8/9 inches, then the said person can empty his bladder and after that the said catheter is required to be

removed slowly. It is known that in normal course, this exercise is required to be carried out every six hours. It is also known that such catheter is required to be replaced once in two or four weeks. If the Appellant / Claimant is maintaining himself by doing such exercise, I am afraid that he would be exposed to other risk such as urinary tract infection, damage of the kidney etc. Further, if the Appellant / Claimant has to carry out such exercise in normal case once in six hours, then it would be difficult for the Appellant / Claimant to do the labour work as effectively as prior to the accident. So far as the fracture to the pelvis is concerned, the pelvis is lower part of the trunk between the abdomen and the thighs. The said fracture is still unstable and I am afraid that the Claimant would not be able to lift the heavy weight and also would not be able to do the heavy labour work.

5 The Appellant / Claimant has deposed before the Tribunal that witness Dr. Bhalerao, Urologist operated his urethra five times by lenses and one time by stitching surgery and also made a plastic surgery to urethra. The said urologist advised him to take the treatment till total life as from the date of accident the urine could not pass in natural course and he has to use an artificial pipe continuously. He has to undergo daily CIC and also suffering from erectile

dis-function. He has further deposed that witness Dr.Deshmukh treated him for his pelvis fracture and he the fixed pelvis and he gave him a pelvis fixater. Witness Dr.Deshmukh has fixed the external fixater rod on his pelvis fracture and for more than one and half month he remained bedridden. He is suffering from serious complications due to the said permanent disablement. He has lost his earning capacity to the considerable extent and no amount of money can compensate the complications and his daily plight.

6 Considering the entire evidence on record, especially the expert opinion of witness Dr.Deshmukh, who has deposed that due to the injuries sustained to the pelvis, the Appellant / Claimant cannot walk in fast speed and further stated in the cross-examination that the Appellant / Claimant can do light work, I do not think that the Appellant / Claimant has lost his earning capacity in toto. However, in my considered opinion, the Tribunal has considered the loss of earning capacity of the Appellant / Claimant at a very lower side. In view of the above discussion, in my considered opinion, there is a loss in the earning capacity of the Appellant / Claimant to the extent of 70%. Thus, the compensation as awarded by the Tribunal under the head of loss of future income requires re-determination. The learned

Member of the Tribunal has considered the income of Appellant / Claimant at Rs.3,000/- per month corresponds to Rs.36,000/- per annum. In the light of the above discussion, if the loss in earning capacity is considered to the extent of 70% then the loss of future income comes to Rs.25,200/- per annum and if it is multiplied by relevant multiplier 16, then the loss of future income comes to Rs.4,03,200/-. The Appellant / Claimant is entitled for the said amount as against the amount of Rs.2,30,400/- awarded by the Tribunal.

7 Considering the nature of permanent disablement as detailed in the permanent disablement certificates Exhibits 24 and 55 respectively, the Tribunal ought to have awarded the compensation separately for the said permanent disablement. The Appellant / Claimant is entitled for an amount of Rs.50,000/- separately for the said permanent disablement.

8 It appears from the evidence that though the accident had taken place on 1st November, 2007, the Appellant / Claimant remained hospitalized for a considerable period, undergone the operations for treatment of his pelvis fracture as well as disruption of

urethra. The Urologist has operated urethra five times by lenses surgery and one time by stitching surgery. The Appellant / Claimant is still suffering from various complications and he is maintaining himself by doing the CIC (Clean Intermittent Catheterisation). However, the Tribunal has not awarded any compensation separately for pains and sufferings. Considering the entire evidence on record, the Appellant / Claimant is entitled for an amount of Rs.1,00,000/- for pains and sufferings and Rs.50,000/- for loss of amenities in future life. As discussed above, if the Appellant / Claimant is maintaining himself by doing the CIC (Clean Intermittent Catheterisation) in his own, he would likely to face the complications in future life such as urinary tract infection, damage of the kidney and many other complications. Thus, the Applicant / Claimant is entitled for the compensation of Rs.40,000/- as compensation for future medical treatment. The Appellant / Claimant is also entitled for an amount of Rs.10,000/- each for special diet, attendant and transportation charges. It has come in the evidence that the Appellant / Claimant is suffering from erectile dis-function. The expert opinion also supports the same. The Appellant / Claimant is a young person aged 28 years. He has lost his sexual life on account of the injuries sustained by him in the

accident. As per the expert opinion, as opined by witness Dr.Bhalerao, the erection ability is lower down. However, there is no clear cut opinion that the Appellant / Claimant has lost his sexual life. In the circumstances, it would be just and proper to award the compensation of Rs.50,000/- under the head of loss of marital pleasure.

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

Sr. No	Particulars of the head	Amount in Rupees
1)	Towards loss of future income (As against Rs.2,30,400/- awarded by Tribunal)	Rs.4,03,200/-
2)	Towards permanent disablement	Rs.50,000/-
3)	Towards pains and sufferings	Rs.1,00,000/-
4)	Towards loss of amenities in future life	Rs.50,000/-
5)	Towards future medical treatment	Rs.40,000/-
6)	Towards special diet, attendant and transportation charges. (Rs.10,000/- each)	Rs.30,000/-
7)	Towards loss of sexual life	Rs.50,000/-
	Total =	Rs.7,23,200/-

10 The Appellant / Claimant is entitled for the total compensation of Rs.7,23,200/- with interest at the rate of 9% per

annum from the date of application till realization of the entire amount.

Thus, the impugned judgment and award passed by the Tribunal requires modification. Hence, the following order:

ORDER

- I. The appeal is hereby allowed with costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Parbhani dated 19th June, 2009 in MACP No.294 of 2008, is hereby modified in the following manner:

“The Respondents 1 and 2 shall jointly and severally pay the compensation of Rs.7,23,200/- (Rupees Seven Lacs Twenty-Three Thousand and Two-Hundred Only) [including interim relief of Rs.25,000/- on account of no-fault liability] to the Petitioner with interest at the rate of 9% per annum from the date of application till realization of the entire amount.”

- III. Except the quantum of compensation, rest of the judgment and award stands confirmed.

- IV. Award be drawn up as per the above modification.
- V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification.
- VI. The Appellant shall pay the deficit Court fees, if any, within four weeks from the date of this order.
- VII. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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