

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 161 OF 2017

BALKRUSHNA BABANRAO MHASKE
VERSUS
IRPHAN AHMED BIYANBANI AND ORS

...
Advocate for Appellant : Mr. N C Garud
Advocate for Respondents : Mr. D.V. Soman
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CORAM : V. K. JADHAV, J.
DATED : 5th JULY, 2017

PER COURT:-

1. By consent of respective parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 19.4.2007, passed by the learned Member, M.A.C.T., Ahmednagar in M.A.C. application No. 785 of 2000, the original claimant has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.
3. Learned counsel for the appellant-claimant submits that the claimant Balkrushna was serving in the police department, as police constable, on monthly salary of Rs.4978/-. He was retired compulsorily on health ground. The Tribunal has not considered his salaried income after necessary deductions like income tax, professional tax etc. and erroneously made deductions on the count

of pension amount and also on the count of personal and living expenses of the claimant. Learned counsel submits that the Tribunal even has not made any addition in the salaried income of the appellant-claimant towards his future prospects in consonance with his age at the time of accident. The learned Member of the Tribunal ought to have made addition to the extent of 50% in the salaried income of the appellant-claimant towards future prospects. Learned Member of the Tribunal has also erroneously applied the multiplier 13 instead of 16. The extract of service book of the appellant is placed on record and the same is marked at Exh.44, wherein his date of birth is mentioned as 1.6.1964. The appellant claimant was 35 years of age at the time of his accident. Thus, the Tribunal has not correctly awarded the compensation under the head of loss of future income.

4. Learned counsel for the appellant-claimant submits that the Tribunal has not awarded entire amount of the medical expenses. Though the Tribunal has considered the documents at Exh. 43/1 to 43/326 for grant of compensation under the head of medical expenses, only awarded amount of Rs.3,40,000/-. The total amount as per the said proved documents Exh.43/1 to 43/326 comes to Rs.4,20,575/- and the claimant is entitled for the same. Learned counsel submits that in addition to this, the claimant is also entitled

for future medical expenses. However, the Tribunal has not awarded any compensation under future medical expenses. Learned counsel submits that the appellant is permanently disabled to the extent of 100% and as such, in addition to the loss of future income, the Tribunal should have awarded compensation separately for the permanent disablement.

5. Learned counsel for the appellant submits that the appellant-claimant was admitted in Poona Medical Hospital Foundation i.e. Ruby Hospital, Pune for considerable period and he was bedridden and unable to move. Even after discharge, a permanent attendant is required for taking care of him and also to help him in his day to day activities. However, the Tribunal has not awarded any compensation for the attendant charges. Even the Tribunal has not awarded any compensation for conveyance. The appellant-claimant had to visit the said hospital frequently for follow up treatment. The learned Member of the Tribunal has awarded very meager amount of Rs.25,000/- towards loss of comfort, pains and sufferings. The appellant claimant is almost bedridden. The appellant claimant has examined Dr. Ashok Bhangé, who is Neurosurgeon. Witness Dr. Ashok Bhangé has deposed that the claimant has difficulty in speech, weakness in all limbs and incontinence of urine and stools. The appellant claimant was admitted from 11.10.1999 to 23.10.1999 and thereafter re-

admitted from 7.10.2000 to 24.2.2000 and again from 3.3.2000 to 8.4.2000. The appellant also underwent the operation on head for removal of blood clots. He was also operated on right hip joint and right knee. However, the Tribunal has not awarded any compensation for loss of future amenities and on the other hand awarded very meager amount on account of pains and sufferings. Learned counsel submits that the appellant-claimant owned and possessed the agricultural land, however, on account of permanent disablement sustained by him to the extent of 100%, he is not able to look after and cultivate the land, personally. The Tribunal has not considered the loss in agriculture income due to lack of personal supervision. The appellant claimant is entitled for the same.

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

- I) New India Assurance Co. Ltd. vs. Shweta Dilip Mehta and Ors., reported in 2010 (3) Mh.L.J. 145;
- II) Raj Kumar vs. Ajay Kumar and another, reported in 2011 (2) Mh.L.J. 569

7. Learned counsel for the respondent insurer submits that the appellant-claimant was serving as police constable on monthly salary

of Rs.4978/-, as per certificate Exh.47 and after necessary deductions, the Tribunal has considered his salaried income Rs.4100/- p.m. The Tribunal has also considered that on retirement, the appellant would be getting pension of Rs.2200/- p.m. Thus, the Tribunal has rightly considered the loss in salaried income to the extent of Rs.1900/- p.m. It is a part of record that the appellant-claimant was residing at a distance of 55 kilometers from his service place and as such, he used to travel 110 kilometers per day on motor cycle. Learned Member of the Tribunal has therefore, rightly deducted $\frac{1}{3}^{\text{rd}}$ amount out of his salaried income towards his personal and living expenses. Learned counsel submits that the Tribunal has correctly applied the multiplier and awarded just and reasonable compensation under the head of loss of future income. Learned counsel submits that considering the documents at Exh. 43/1 to 43/326, the Tribunal has awarded medical expenses to the tune of Rs.3,40,000/- and further also awarded Rs.71,500/- towards leave without pay. The Tribunal has awarded just and reasonable compensation under non pecuniary heads. Learned counsel submits that there is no substance in the appeal and thus appeal is liable to be dismissed.

8. On careful perusal of evidence and the impugned judgment and award passed by the Tribunal, I find that the approach of the

Tribunal is erroneous, so far as the determination of compensation is concerned. Undisputedly, the appellant was compulsorily retired on health ground. Though he would be getting pension on his retirement compulsorily, there is no question of deducting amount of pension while determining the compensation towards loss of future income. The appellant was 35 years of age at the time of accident. He was retired compulsory on health ground. The Tribunal has not made any addition in his salaried income towards future prospects. As per his service book extract, Exh.44, the date of birth of the appellant is 1.6.1964 and as such, the Tribunal ought to have made addition to the extent of 50% in his salaried income towards future prospects. Instead of that, the learned Member of the Tribunal has erroneously deducted the pension amount from the salaried income. Not only that but the Tribunal has also deducted 1/3rd amount of his salaried income towards his personal and living expenses when the same is not permissible.

9. In the case of ***Rajkumar vs. Ajay Kumar and another (supra)*** relied upon the learned counsel for the appellant, in para 20 of the judgment, the Supreme Court observed that in case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant payable to the claimant, and therefore, there is no need to deduct 1/3rd or any other percentage from out of

the income, towards personal and living expenses. Thus, the compensation under the head of loss of future income is required to be re-determined. As per certificate Exh.47, the income of the appellant, after necessary deduction is required to be considered at Rs.4100/- p.m. and after addition of 50% amount in his salaried income, towards future prospects, the total income comes to Rs.6150/-. The appellant has not produced on record even 7x12 extract to substantiate his contention that due to lack of personal supervision there is loss in the agriculture income. I am not inclined to consider the said loss in absence of any positive evidence. Considering the age of the appellant, in view of ratio laid down by the Supreme Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another- 2009 (5) Mh.L.J. 775**, the relevant multiplier would be 16 instead of 13. Thus, the said income of Rs.6150/- p.m. corresponds to Rs.73,800/- per annum if multiplied by 16, future loss of income comes to Rs.11,80,800/- and the appellant claimant is entitled for the same. The appellant claimant is entitled for entire amount since as per the medical evidence, the injury sustained by him resulted into permanent disablement to the extent of 100%.

10. So far as the medical expenses are concerned, though the Tribunal has considered the medical bills Exh.43/1 to 43/326 and

further held that the claimant is entitled for the same, awarded compensation of Rs.3,40,000/- instead of Rs.4,20,575/-. On perusal of Exh.38, wherein the details of those bills with cash memo numbers and amounts are mentioned and the total amount comes to Rs.4,20,575/-. The Tribunal, for no reason, awarded less amount. The appellant claimant is entitled for the said amount of Rs.4,20,575/-.

11. On careful perusal of evidence of Dr. Ashok Bhange, who is neurosurgeon, having qualification of M.S. in Neurosurgery, attached to Poona Medical Hospital Foundation since 1990, it appears that in cross examination, he has stated that the patient's treatment was not complete but for rehabilitation problem further admission was not necessary. Thus, witness Dr. Ashok Bhange has not completely ruled out the possibility of health problems owing to the head injury and as such, the appellant is entitled lump-sum amount towards future medical expenses of Rs.50,000/-.

12. Witness Dr. Ashok Bhange has described nature of permanent disablement and deposed that due to injuries the patient's disability is to the extent of 100% and patient is suffering from difficulty in speech, weakness in all limbs and incontinence in urine and stools. The next friend of the appellant i.e. his wife Lata Mhaske has also

deposed that the appellant at present is bedridden. The appellant was admitted in the said hospital for considerable period as detailed in the foregoing paras, however, the Tribunal has not awarded any compensation for the attendant charges. The appellant is entitled for the said charges for not only during his stay in the hospital but he would required attendant 24x7 in future life also. The appellant is entitled for amount of Rs.2,00,000/- on this count. The appellant is also entitled for amount of Rs.50,000/- for special diet etc. and Rs.50,000/- for conveyance charges.

13. The appellant is almost bedridden, the Tribunal has not awarded any compensation for loss of amenities in future life. Further the Tribunal has awarded very meager amount for pains and sufferings. The witness Dr. Ashok Bhange has deposed that the appellant claimant underwent operation on the head for removal of blood clot and operation on right hip joint and right knee. The appellant has also difficulty in speech, weakness in all limbs and incontinence in urine and stools. It appears that the appellant become completely paralytic and lost control over the bladder and movement. The next friend, wife of the appellant has deposed that prior to the accident, the appellant claimant was strong, stout and healthy. It is very difficult to assess any amount of compensation for the pains and agony suffered by the appellant and for having become

lifelong handicapped, no amount of compensation can restore the physical problem of the appellant. However, in view of sufferings and the loss of amenities in future life, the appellant is entitled for amount of Rs.2,00,000/- in total pains and sufferings and loss for amenities in future life.

14. In addition to loss of amenities in future life, considering the nature of permanent disablement, the appellant is also entitled for separate compensation of permanent disablement. In the given set of facts it would be just and appropriate if the amount of Rs,1,00,000/-is awarded separately for permanent disablement to the extent of 100% sustained by the appellant. The aforesaid compensation under non pecuniary heads is awarded to the appellant claimant for his on going care and surviving.

15. Thus, the break of compensation, under different heads, as worked out herein above, awardable to the appellant-claimant, which can be broadly categorized as under:-

i)	Loss of future income (As against Rs.1,95,000/- awarded by the Tribunal)	Rs. 11,80,800.00
II)	Medical expenses (As against Rs.3,40,000/- awarded by the Tribunal)	Rs. 4,20,575.00
III)	Future medical expenses	Rs. 50,000.00

IV)	Loss of amenities in future life, pains and sufferings (as against Rs.25,000/- awarded by the Tribunal.)	Rs. 2,00,000.00
V)	Attendant charges	Rs. 2,00,000.00
VI)	Conveyance	Rs. 50,000.00
VII)	Special Diet	Rs. 50,000.00
VIII)	Permanent disablement	Rs. 1,00,000.00

Total Rs. 22,51,375.00
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16. Thus, the claimant is entitled for total compensation of Rs.22,51,375/-. In view of above discussion, 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 19.04.2007 passed by the learned Member, M.A.C.T. Ahmednagar in M.A.C. application No. 785 of 2000 is modified in the following manner:-

“The Opponent Nos. 1 to 3 jointly and severally do pay to the appellant an amount of Rs.22,51,375/- (Rupees Twenty two lacs fifty one thousand three hundred seventy five only) inclusive of the amount, if any, paid under “no fault liability” together with

proportionate costs and interest on unpaid amount @ 9% p.a. from the date of filing of petition till realization of entire amount”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per above modification.
- V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be part of the modified award.
- VI. On realization of the amount, an amount of Rs.15,00,000/- (Rupees fifteen lacs) alongwith accrued interest thereon, shall be kept in fixed deposit, in any nationalized bank, for a period seven years and the appellant-claimant or his next friend i.e. wife Latabai Balkrishna Mhaske is entitled to withdraw the quarterly interest. The remaining amount shall be paid to the appellant-claimant.
- 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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