

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

909 FIRST APPEAL NO. 501 OF 2017

SUNIL YADAVRAO HARALE
VERSUS
SANJAY UTTAM MALI AND ANR

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Advocate for Appellant : Mr. Shrikant S. Patil.

Advocate for Respondent No.1 : Mr. Ujwal Subhash Patil.

Advocate for Respondent No.2 : Mr. S. G. Chapalgaonkar.

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CORAM : **V. K. JADHAV, J.**

DATE : 29th June, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the Chairman of the Motor Accident Claims Tribunal, Dhule dated 4th May, 2010 in MACP No.1004 of 2005, the original Claimant has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

3 The learned counsel for Appellant / original Claimant submits that prior to the accident, the Appellant / Claimant was doing the mason work on the wages of Rs.150/- per day. In order to substantiate the same, the Appellant / Claimant has examined one

Pramod Khairnar and thus, duly proved the contents of the salary certificate Exhibit 53. The learned counsel submits that said witness Pramod Khairnar was the principal employer and the Appellant / Claimant was working with one contractor. Principal employer Pramod Khairnar used to certify the working days of the Appellant / Claimant and as such, he was getting Rs.150/- per day for the working days as certified. The Appellant / Claimant was getting near about Rs.4,500/- per month. However, the Tribunal has not considered the evidence of said witnesses Pramod Khairnar in its proper perspective and erroneously considered the income of Appellant / Claimant at Rs.2,100/- per month. The learned counsel submits that though the Appellant / Claimant has sustained permanent disablement to the extent of 75%, he has lost his earning capacity to the extent of 100%. The Appellant / Claimant has examined Witness No.2 Dr. Sanjiv Desai and duly proved the contents of certificates Exhibits 42 and 44 respectively. Witness Dr. Sanjiv Desai has deposed before the Tribunal that the Appellant / Claimant cannot do the work as labour and the injuries as mentioned in the disablement certificate Exhibit 44 are not recoverable. The Appellant / Claimant has given all details of his sufferings before the Tribunal in his oral evidence, however, the Tribunal has erroneously considered the percentage of his permanent

disablement as a percentage affecting his earning capacity and awarded the compensation to that extent only. The learned counsel submits that the Tribunal has not awarded any separate compensation under the head of permanent disablement. The Appellant / Claimant has sustained fracture of spine. He was operated by affixing a rod. The Appellant / Claimant is suffering from paraplegia i.e. weakness in both the lower limbs. The learned counsel submits that even the Tribunal has awarded very meager amount under the non-pecuniary heads. The Tribunal has not awarded any amount under the loss of amenities in future life. The learned counsel submits that though the Tribunal has exercised the discretion in favour of the Appellant / Claimant for grant of interest, passed the conditional order directing the Respondents to pay the interest for last three years only prior to the date of award. The learned counsel submits that the same is against the provisions of Section 171 of the Motor Vehicles Act, 1988. Furthermore, the Appellant / Claimant is suffering from paraplegia and he was prevented from sufficient cause to prosecute his case in a time bound manner. Thus, the delay whatsoever occurred was beyond the control of Appellant / Claimant. The Tribunal has however, not considered the same and awarded the interest for three years prior to the date of award. The same is liable to be quashed and set aside.

4 The learned counsel for Respondent / Insurer submits that the oral evidence of witness Pramod Khairnar is contrary to the contents of document Exhibit 53. Said witness Pramod Khairnar had certified vide document Exhibit 53 that he was paying Rs.4,500/- per month to the Appellant / Claimant. However, he has admitted in his cross-examination that he was only certifying the working days of the Appellant / Claimant and the contractor, who has employed the Appellant / Claimant was paying him the daily wages. The learned counsel submits that the Tribunal has therefore, rightly considered the minimum wages prevailing at that time and accordingly, determined the compensation under the head of loss of future income. The learned counsel submits that the Tribunal has awarded just and reasonable compensation in consonance with the permanent disablement certificate Exhibit 44 issued by the concerned doctor. The Tribunal has also awarded just and reasonable compensation under the non-pecuniary heads. The learned counsel submits that the delay in prosecuting the claim was caused mostly at the instance of the Appellant / Claimant and therefore, the Tribunal has rightly awarded the interest for last three years prior to the date of award.

5 On careful perusal of the pleadings, evidence and the impugned judgment and award, it appears that Witness Pramod Khairnar has deposed contrary to the contents of certificate Exhibit 53. He was merely certifying the working days of Appellant / Claimant, who was under the employment of a contractor. The said contractor used to pay the wages to Appellant / Claimant as per his working days certified by said Witness Pramod Khairnar. The Appellant / Claimant has not examined the said contractor to substantiate his contention that he was getting Rs.150/- per day as a wages. However, it has come in the evidence of witness Pramod Khairnar that the Appellant / Claimant was working as a mason. It appears that witness Pramod Khairnar was not subjected to any cross-examination on this point and it appears that the same is also not disputed by the other side. The Appellant / Claimant was skilled labour and in the year 2005 a skilled labour would get atleast Rs.3,000/- per month and not less than that. The Tribunal has however, erroneously considered his income at Rs.2,100/- per month. On careful perusal of the contents of Exhibit 44 and the oral evidence of witness Dr. Sanjiv Desai, it appears that the said permanent disablement to the extent of 75% has affected the earning capacity of the Appellant / Claimant to the extent of 100%. The Appellant / Claimant has deposed that he cannot work and he

cannot stand even. He has further deposed that he has lost the sensation of urine and latrine. Even he cannot sit for a long and he has to sleep for whole day. Dr. Sanjiv Desai has also given his expert opinion that in future the Appellant / Claimant would not be able to work as a labour. The Appellant / Claimant is suffering from paraplegia i.e. weakness in both the lower limbs. In these circumstances, the Tribunal ought to have considered his earning capacity affected to the extent of 100% though the permanent disablement is to the extent of 75% as certified by the concerned doctor. Thus, the compensation under the head of loss of future income as worked out by the Tribunal requires re-determination.

6 It further appears that even though the Appellant / Claimant has suffered paraplegia, the Tribunal has not awarded any separate compensation under the head of permanent disablement. The Appellant / Claimant has suffered a lot and he is facing lot of complications. He is not able to stand, walk and lost the sensation of urine etc. due to weakness in both the lower limbs. The Appellant / Claimant is thus, entitled for an amount of Rs.1,00,000/- for aforesaid permanent disablement separately. Though the Tribunal has awarded Rs.50,000/- towards pains and sufferings, the Tribunal has not

awarded any amount for loss of amenities in future life. The Appellant / Claimant is entitled for an amount of Rs.50,000/- for loss of amenities in future life. It further appears that the Tribunal has awarded very meager amount under the heads of future medical treatment, special diet, attendant, transportation and other expenses. The Appellant / Claimant is entitled for an amount of Rs.50,000/- towards future medical treatment and Rs.10,000/- each for special diet, attendant and transportation charges.

7 So far as the interest part is concerned, I do not find any justification in the order passed by the Tribunal directing the Respondents to pay the interest for three years prior to passing of the award. Though the Tribunal has observed that the delay has been caused mostly at the instance of the Claimant, considering the sufferings of the Claimant and the remote consequences of the permanent disablement sustained by him, it would be just and proper if the Appellant / Claimant would get the interest at the rate of 7.5% per annum from the date of application till realization of the entire amount in terms of the provisions of Section 171 of the Motor Vehicles Act, 1988.

8 In view of the above discussions, 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 (3000 x 12 x 17) (as against Rs.3,21,300/- awarded by Tribunal)	Rs.6,12,000/-
2)	Towards permanent disablement	Rs.1,00,000/-
3)	Towards medical bills (as awarded by the Tribunal)	Rs.77,234/-
4)	Towards pains and sufferings (as awarded by the Tribunal)	Rs.50,000/-
5)	Towards future medical expenses including removal of rod etc. (as against Rs.10,000/- awarded by the Tribunal under the head of removal of rod)	Rs.50,000/-
6)	Towards special diet, transportation, attendant charges etc. Rs.10,000/- each (as against Rs.5,000/- awarded by the Tribunal)	Rs.30,000/-
7)	Towards loss of amenities in future life	Rs.50,000/-
	Total =	Rs.9,69,234/-

9 The Appellant / Claimant is entitled for the total amount of compensation of Rs.9,69,234/- alongwith interest at the rate of 7.5% per annum from the date of application till realization of entire amount. The impugned judgment and award passed by the Tribunal thus, requires modification. Hence, the following order:

ORDER

I. The appeal is hereby partly allowed with proportionate costs.

II. The judgment and award passed by the Chairman of the Motor Accident Claims Tribunal, Dhule dated 4th May, 2010 in MACP No.1004 of 2005, is hereby modified in the following manner:

“Respondents 1 and 2 do jointly and severally pay an amount of Rs.9,69,234/- (Rupees Nine Lacs Sixty-Nine Thousand Two-Hundred and Thirty-Four Only) (inclusive of N.F.L. amount) towards compensation to the Petitioner together with simple future interest at the rate of 7.5% per annum from the date of application till realization of the entire amount.

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. The Appellant / Claimant shall pay the deficit Court fees within four weeks from the date of this order.

- VI. 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.
- VII. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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