

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

FIRST APPEAL NO. 1015 OF 2014

SAU. KAMAL DIGAMBER NANNAWARE
VERSUS
AFSAR ABDULREHMANN SHAIKH AND OTHERS

...

Advocate for Appellant : Mr. P. P. Khandagale.

Advocate for Respondent No.3 : Mr. Atul B. Gatne.

Respondent Nos.1 & 2 served.

...

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

DATE : 21st March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar dated 25th April, 2013 in MACP No.97 of 2008, the original Claimant has preferred this appeal to the extent of quantum.

3 The learned counsel for Appellant / original Claimant submits that the Claimant has sustained injuries in the accident, which resulted into permanent disablement to the extent of 22% and the Tribunal has awarded Rs.2,000/- per percentage for the aforesaid disablement. The learned Member of the Tribunal has not

considered the income of deceased and awarded the compensation without applying the multiplier method. The same is not permissible. The learned counsel submits that the Tribunal has also awarded very meager amount under the non-pecuniary heads such as pains and sufferings etc. The Tribunal has also awarded meager amount under the heads of special diet, attendant and conveyance charges etc.

4 The learned counsel for the Respondent / Insurer submits that Appellant / Claimant has admitted in her cross-examination that after the accident she is doing the household work in normal way and she also attended the Court dates by coming to the Court on foot. The learned counsel submits that the expert examined by the Claimant has also stated in his cross-examination that he is not able to tell about the effect of the said disablement at present. The learned counsel submits that the Claimant is not suffering from any permanent disablement and the same has also not affected her earning capacity. The Tribunal has awarded just and reasonable compensation. No interference is required.

5 On careful perusal of the evidence and the judgment and award passed by the Tribunal, it appears that the Claimant has

proved the certificate in Form Comp 'B' Exhibit – 36. On perusal of the certificate Exhibit – 36, it appears that the Claimant is sufferings from fracture pelvis alongwith superior and inferior pubic rami on left side. As per the X-ray taken, there is nonunion fracture of inferior pubic ramus on left side. Witness Dr. Rahul Kulkarni has also stated in his affidavit of evidence that the Claimant is suffering from pains and limp on walking. She is also sufferings from local tenderness at left hip joint region and the pains on squatting position. The Claimant is suffering from permanent disablement to the extent of 22%. Witness Dr. Rahul Kulkarni has also stated in his affidavit of evidence that the earning capacity of Appellant is affected to the extent of percentage of the permanent disablement as certified by him.

6 According to the Claimant, she was getting Rs.100/- per day by doing the labour work prior to the accident. However, after the accident, she is not able to do the labour work effectively as she was doing prior to the accident. On perusal of the judgment and award, it appears that the learned Member of the Tribunal has made departure from the multiplier method without any justification and awarded the compensation only on the basis of the percentage of

permanent disablement.

7 In view of the above, the monthly income of Appellant / Claimant is required to be considered at Rs.3,000/- per month corresponds to Rs.36,000/- per annum. As per her age, the relevant multiplier would be 17. Thus, by applying the multiplier 17, the total amount comes to Rs.6,12,000/- and 22% of the same comes to Rs.1,34,640/-. The Claimant is entitled for the same under the head of loss of future income. The learned Member of the Tribunal has rightly awarded the compensation of Rs.15,000/- for the medical expenses incurred by the Claimant. However, the learned Member of the Tribunal has awarded very meager amount under the head of pains and sufferings and other heads. Considering the permanent disablement and its consequences, the Claimant is entitled for an amount of Rs.35,000/- under the head of pains and sufferings as against Rs.10,000/- awarded by the Tribunal. The Claimant is entitled for an amount of Rs.15,000/- towards special diet and Rs.15,000/- for attendant charges. The Claimant is also entitled for an amount of Rs.10,000/- towards conveyance charges. Total of the above comes to Rs.2,24,640/-. The learned Member of the Tribunal has recorded the finding of the

contributory negligence. Though the learned Member of the Tribunal has observed about the head on collusion between two vehicles instead of recording the finding of composite negligence, recorded the finding of contributory negligence. Let it be as it is. But, out of the aforesaid amount, the Claimant is entitled to the extent of 50% since owner and the Insurer of the other vehicle is not impleaded as party respondents. Thus, the break up of compensation under the different heads as discussed above can be broadly categorized as under:

Sr. No.	Particulars of the head	Amount in Rupees
1)	Towards Loss of future income	Rs.1,34,640/-
2)	Towards medical expenses (as awarded by the Tribunal)	Rs.15,000/-
3)	Towards pains and sufferings (as against Rs.10,000/- awarded by Tribunal)	Rs.35,000/-
4)	Towards special diet (as against Rs.5,000/- awarded by Tribunal)	Rs.15,000/-
5)	Toward attendant charges (as against Rs.5,000/- awarded by Tribunal)	Rs.15,000/-
6)	Towards conveyance charges (as against Rs.5,000/- awarded by Tribunal)	Rs.10,000/-
	Total =	Rs.2,24,640/-

8 The Appellant / Claimant thus, entitled for the total amount of compensation of Rs.1,12,320/-. Hence, the following

order:

ORDER

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

II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar dated 25th April, 2013 in MACP No.97 of 2008, is hereby modified in the following manner:

“Respondent Nos.1 to 3 shall pay Rs.1,12,320/- (Rupees One Lac Twelve Thousand Three-Hundred and Twenty Only) inclusive of NFL amount to the Claimant jointly and severally alongwith the interest @6% per annum from the date of filing of the claim petition till realization of entire the amount.”

III. 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 / Claimant shall pay the deficit Court fees, if any, within four weeks from the date of this order.
- VII. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm