

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

FIRST APPEAL NO. 1292 OF 2016

SUDAM MURLIDHAR WAGH
VERSUS
BABASAHEB RAOSAHEB BHAD AND ANOTHER

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Advocate for Appellant : Mr. Amol P. Khedkar.

Advocate for Respondent No.2 : Mr. S. R. Bodade.

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

DATE : 30th January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Aurangabad dated 23rd July, 2015 in MACP No.290 of 2011, the original Claimant has preferred this appeal to the extent of quantum.

3 Brief facts giving rise to the present appeal are as follows:

- i. On 25th November, 2009 at about 04:30 pm, the Appellant / Claimant Sudam Murlidhar Wagh was travelling on motorcycle as a pillion rider by

Aurangabad – Beed road. On way, in front of one Swaraj Hotel, one Tata Sumo vehicle bearing registration No.MH-44-B-1416 came in a high speed and gave a dash to the motorcycle. In consequence of which, the Appellant / Claimant sustained injuries on his leg, head etc., which also resulted into permanent disablement. The Appellant / Claimant approached to the Motor Accident Claims Tribunal, Aurangabad by filing MACP No.290 of 2011 for grant of compensation under the various heads.

- ii. The Respondent / owner though duly served, remained absent and therefore, hearing of the claim petition order to be proceeded *ex-parte* against him.
- iii. Respondent No.2 / Insurer has resisted the claim petition on two grounds; firstly, the driver of the Tata Sumo vehicle was not at fault and secondly, the driver of the Tata Sumo was not holding valid and effective driving licence at the relevant time and

thus, there has been breach of terms and conditions of the policy.

- iv. The learned Member of the Tribunal has recorded the findings in the affirmative and concluded that the accident had taken place on account of rash and negligent driving of the driver of the Tata Sumo and in the said accident, the Appellant / Claimant sustained the injuries, which resulted into permanent disablement. On the basis of the evidence adduced by the Appellant / Claimant, the learned Member of the Tribunal, Aurangabad partly allowed the claim petition thereby directed the Respondents to pay jointly and severally Rs.80,895/- including NFL amount to the Appellant / Claimant with interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount. Being aggrieved by the same, to the extent of quantum, the original Claimant has preferred this appeal.

4 The learned counsel for the Appellant / Claimant submits that the learned Member of the Tribunal has not considered the future loss of income and for no reason made the departure from the multiplier method while assessing the compensation in a personal injury claim filed by the Claimant. The learned counsel submits that in absence of any income proof as a supervisor in the sugar factory, the notional income of the Appellant / Claimant should have been considered by the Tribunal at Rs.4,500/- per month. The Appellant / Claimant has examined two doctors to substantiate his contention. Witness Dr. Jaiswal has deposed that the injuries sustained by the Appellant / Claimant resulted into permanent disablement to the extent of 25%. Witness Dr. Saoji has deposed that the Appellant / Claimant is not able to do the hard labour work in future. The learned counsel submits that both the doctors have observed the shortening of leg and it is thus evident that the Appellant / Claimant could not be able to perform his labour work as effectively as he could before the accident. The Appellant / Claimant has undergone two operations and he was also treated for his head injury. The learned Member of the Tribunal has not awarded any amount for the head injury and its remote

consequences in future. Further, as opined by witness Dr. Saoji that the rod, which was inserted in the leg of the Appellant / Claimant, is required to be removed after some time and for that purpose certain expenses required. The learned counsel submits that the Tribunal has awarded very meager amount under the pains and sufferings.

5 The learned counsel for Respondent / Insurer submits that the Appellant / Claimant was remained under treatment of witness Dr. Saoji and witness Dr. Saoji has not issued any certificate of disablement. The Appellant / Claimant has approached witness Dr. Jaiswal for obtaining the permanent disablement certificate. Witness Dr. Jaiswal has issued permanent disablement certificate in Form Comp. "B" mentioning therein that the Appellant / Claimant has sustained permanent disablement of leg to the extent of 15% and 10% on account of head injury. The learned counsel submits that witness Dr. Jaiswal has issued the permanent disablement certificate in respect of the leg injury only on the basis of clinical examination and as submitted by him in his cross-examination, the Appellant / Claimant was not subjected to any radiological examination before issuance of the permanent

disablement certificate. Furthermore, witness Dr. Jaiswal being an Orthopedician has no authority to issue the certificate of disablement on account of the head injury sustained by the Appellant / Claimant. Moreover, the Appellant / Claimant has also not deposed before the Tribunal that because of the head injury, he has been facing the consequences. The learned counsel submits that the Tribunal has therefore, rightly made a departure from the usual multiplier method for assessing the compensation and accordingly awarded the just and reasonable compensation to the Appellant / Claimant. No interference is required. There is no merit in the appeal.

6 On careful perusal of the evidence of witness Dr. Saoji and witness Dr. Jaiswal, it appears that Appellant / Claimant had sustained Grade II compound comminuted fracture of right tibia fibula with intra cranial bleed. On careful perusal of the discharge card issued by witness Dr. Saoji at Exhibit – 32, it appears that Dr. Saoji has observed that, the close reduction done and 345mm interlocking tibial nail passed medial to patellar tendon. Further, the distal locking done with two bolts. It further appears that Dr. Saoji has carried out investigation by taking CT Scan of brain. He has

observed the temporoparietal bleed with subarachnoid haemorrhage. However, instead of obtaining the permanent disablement certificate from witness Dr. Saoji, the Appellant / Claimant has approached witness Dr. Jaiswal. However, witness Dr. Jaiswal is an orthopedic surgeon and his qualification is M.S. (Ortho.). He had noted the head injury with compound fracture of tibia and fibula of right side. He has also referred the CT Scan report which indicating the bleeding at subarachnoid. He has also taken into account the radiological examination of Dr. Saoji and further observed that interlocking nail of right tibia was done. On clinical examination, witness Dr. Jaiswal has observed that the Appellant / Claimant had a limping gait on right side. He has further given the opinion in an unequivocal words that the Appellant / Claimant has a shortening of leg by 3/4 cms and the movement of right knee flexion are restricted. According to him, the Claimant cannot squat or sit cross-legged. He has further given the opinion that Appellant / Claimant had constant headache and giddiness. Accordingly, witness Dr. Jaiswal has issued certificate in Form Comp. "B", which is duly proved and marked as Exhibit – 29. On perusal of the same, it appears that witness Dr. Jaiswal has given

all the details in the certificate as discussed above and opined that the Appellant / Claimant has permanent disablement to the extent of 15% for leg and 10% on account of the head injury.

7 In view of the above evidence, there was no reason for the learned Member of the Tribunal to make a departure from the multiplier method without any reason. It is well settled that the departure from the multiplier method to assess the compensation in case of claim under personal injury is permissible in a rare case, but in the instant case, the Tribunal has not given any reasons justifying the departure from the multiplier method. On the other hand, to assess the just and reasonable compensation, in the given set of facts, the multiplier method would be more appropriate in the instant case to award just and reasonable compensation. Witness Dr.Jaiswal has no authority to issue the certificate indicating the permanent disablement to the extent of 10% on account of the head injury sustained by Appellant / Claimant and same is the job of Neurosurgeon. In view of the same, the future loss of income of the Appellant / Claimant can be considered only on the basis of his notional income and that also to the extent of 15% of the permanent disablement as certified by witness Dr. Jaiswal. There is no total

loss of earning capacity and as opined by witness Dr. Saoji, at the most, the Appellant / Claimant would not be able to do any hard labour work. Considering the disablement sustained by the Appellant / Claimant and further consequences of the said disablement on his earnings, in my considered opinion, it would be just and appropriate to consider the loss of earning capacity of the Appellant / Claimant to the extent of 25%. So far as the head injury sustained by the Appellant / Claimant is concerned, the *lump sum* amount can be awarded for the same.

8 The Appellant / Claimant has failed to prove his income by doing the job of supervisor in a sugar factory. However, his notional income of Rs.4,500/- can be considered as a labour and considering his age at the time of accident, the relevant multiplier would be 16. The Appellant / Claimant is thus, entitled for an amount of Rs.2,16,000/- for the loss of future income by applying the multiplier method. The Appellant / Claimant is also entitled for an amount of Rs.35,000/- under pains and sufferings instead of Rs.25,000/- as awarded by the learned Member of the Tribunal. The Appellant / Claimant is also entitled for an amount of Rs.15,000/- on account of the head injury and its remote consequences. Thus, the

compensation under the different heads, which can be broadly categorized is as under:

Sr. No.	Particulars of the head	Amount in Rupees
1)	Loss of future income (4500 x 12 x 16) 25% out of total amount	Rs.2,16,000/-
2)	Pains and sufferings	Rs.35,000/-
3)	Head injury	Rs.15,000/-
4)	Medical expenses	Rs.30,895/-
5)	Loss of future happiness	Rs.5,000/-
6)	Shortening of life span	Rs.5,000/-
7)	Expenses for undergoing one more surgery	Rs.15,000/-
	Total =	Rs.3,21,895/-

9 The Appellant / Claimant is entitled for the total amount of compensation as worked out hereinbefore. The impugned judgment and award requires modification to that effect. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The impugned judgment and award passed by the Chairman, Motor Accident Claims Tribunal,

Aurangabad dated 23rd July, 2015 in MACP No.290 of 2011, is hereby modified in the following manner:

“Opponent Nos.1 and 2 jointly and severally are directed to pay total compensation of Rs.3,21,895/- (Rupees Three-Lacs Twenty-One Thousand Eight-Hundred and Ninety-Five only) (including “NFL” amount) to Claimant Sudam Murlidhar Wagh alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. The Claimant shall pay the deficit Court fees within four weeks from the date of this order.
- V. Award be drawn up as per the above modification.
- VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]