

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 FIRST APPEAL NO. 1343 OF 2014

KHANDERAO GOVINDRAO DESHPANDE
VERSUS
GANPAT HARIRAM GIRI AND OTHERS

Mr. P.S. Paranjpe, Advocate for the Appellants.
Mr. V.R. Mundada, Advocate for Respondent no.2.
Mr. R.M. Giri, Advocate for Respondent no.3.
Mr. P.P. Bafna, Advocate for Respondent no.4.

CORAM : V.K. JADHAV, J.
DATE : 23-02-2017.

P.C. :

1. Heard finally with consent at the admission stage.
2. Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Hingoli dated 22.04.2013 in M.A.C.P. No. 312 of 2007, the original-claimant has preferred this appeal to the extent of quantum.
3. The learned counsel for the appellant-original claimant submits that, though, the claimant has suffered from the disablement to the extent of 40% so far as his eye sight is concerned, the same is not considered by the Tribunal and and Tribunal has not awarded any compensation for having sustained the permanent disablement on account of the injuries sustained in the accident. The learned counsel submits that, the appellant claimant was the employee of State Bank of Hyderabad, Branch

Kalamnuri. After the accident, he had taken the treatment in various hospitals and for that purpose he had to take leave of eight months. Though, the claimant has accepted in his cross examination that he got the salary of the leave period, at the time of retirement he could not get the encashment of the leave for the reason that, he had already taken the leave of near about eight months for the treatment in various hospitals. The learned Tribunal has not considered the same. The learned counsel submits that, though, the appellant claimant got the reimbursement of the medical expenses incurred by him, he got the reimbursement to some extent. The appellant-claimant has claimed near about Rupees One Lakh for which he did not get any reimbursement from the office, however, the same is not considered by the Tribunal. The learned counsel submits that, though, the claimant has claimed the compensation under the non-pecuniary heads, the Tribunal has awarded a meagre amount of Rs. 15,000/- for pains and sufferings. The appellant-claimant had sustained the injury on his upper lip, nasal bone, right leg and on the head. However, the Tribunal has not awarded a reasonable amount under the head of pains and sufferings and also for conveyance and the attendant charges.

4. The learned counsel appearing for the other respondents submits that, the Tribunal has awarded just and reasonable compensation. The appellant-claimant has failed to prove the disablement certificate though produced on record. The

appellant-claimant has not examined the doctor who has issued the said disablement certificate. The claimant has also admitted in his cross-examination that he got the reimbursement of all the medical expenses incurred by him and, therefore, the tribunal has not awarded any compensation for the medical expenses. So far as the loss in the encashment of the leave at the time of retirement is concerned, the claimant has not produced before the Tribunal the relevant papers indicating the loss in the encashment of the leave period. The appellant-claimant has claimed exorbitant amount of Rupees Two Lakhs under that head without any substance. It has also contended that, the Tribunal has awarded just and reasonable amount of compensation under the non-pecuniary heads. No interference is required. There is no substance in the appeal and the appeal is liable to be dismissed.

5. On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that, the claimant has produced the permanent disablement certificate in Comp. Form 'B' along with list exhibit-24 and the said certificate has been issued by the Ophthalmic Surgeon of Government Hospital, Hingoli. It has stated in the said certificate that, the claimant has lost his eye sight to the extent of 40%. Furthermore, the said certificate in Comp. Form 'B' since issued by Ophthalmic Surgeon of the Government Hospital, I consider the same for grant of compensation under the head of permanent disablement.

Furthermore, the appellant-claimant has stated in his affidavit of evidence that, in the accident he had sustained the injuries on his leg, nose, forehead, right leg. He had sustained the fracture injury on the nasal bone and he was operated for the said injuries including the injury sustained on the eyes. There is nothing in the cross-examination to disbelieve the same. In view of the same the claimant is entitled for an amount of Rs. 50,000/- for the permanent disablement as aforesaid and the other injuries which resulted into disfiguration of his face permanently. The learned Member of the Tribunal has rightly come to the conclusion that there is no loss in the future income and the appellant-claimant is not entitled for any compensation on that count. So far as, the loss in the encashment of the leave period is concerned, the claimant has not produced the relevant documents to show the actual loss incurred by him at the time of his retirement. Though, the said record is available with his employer State Bank of Hyderabad, the same is not produced before the court. It is not disputed that the appellant claimant met with an accident when he was 53 years of age and he had served in the said bank for more than 20 years. Unless and until the record of his leave title at the time of his retirement is produced before the Court, loss in the encashment of the leave at the time of retirement cannot be considered on the basis of the oral evidence of the appellant-claimant.

6. It is a matter of record and the claimant has also

deposed to that effect that, after the accident he had taken the treatment in various hospitals. He had taken the treatment of Dr. Ruturaj N. Jadhav, Dr. Manish Deshpande, then some time he was admitted in Lifeline Hospital where the C.T. scan was also done, he remained under the treatment Dr. S.V. Subhedar for the treatment of his eyes, thereafter, he had taken the treatment of Dr. Ravi Agrawal and Dr. Ramdeo Agrawal. The learned Member of the Tribunal has awarded a very meagre amount under the head of pains and sufferings. The appellant-claimant is, thus, entitled for an amount of Rs. 50,000/- for pains and suffering as against Rs. 15,000/- awarded by the tribunal. The tribunal has awarded the interest @ 6% per annum instead of 7.5% per annum. Furthermore, the appellant-claimant is also entitled for conveyance and for the attendant charges, the claimant is entitled for an amount of Rs.15,000/- in total on both the counts. The learned counsel for the appellant-claimant submits that, due to the loss in the eye sight and the other disabilities the appellant-claimant had to take premature retirement, however, to substantiate the same no oral or documentary evidence is adduced before the Tribunal.

7. In view of the above discussion, the break-up of compensation under the various heads which can be broadly categorised as under:

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| 1) | Permanent disablement | Rs. 50,000/- |
| 2) | Pains and sufferings | Rs. 50,000/- |
| | (as against Rs. 15,000/- as awarded by the tribunal) | |

3)	Conveyance and attendant charges	Rs. 15,000/-
	Total	Rs. 1,15,000/-

8. The claimant is, thus, entitled for the total compensation of Rs. 1,15,000/- (Rupees One Lakh Fifteen Thousand). The judgment and award passed by the Tribunal, thus, requires modification to that extent. Hence the following order:

ORDER

- i) Appeal is partly allowed with proportionate costs.
- ii) The judgment and award passed by the Member, Motor Accident Claims Tribunal, Hingoli dated 22.04.2013 in M.A.C.P. No. 312 of 2007, is hereby modified in the following manner.
- iii) The respondent nos.1 to 4, jointly and severally do pay an amount of Rs. 1,15,000/- inclusive of no fault liability with interest @ 7.5% per annum from the date of filing of the petition till the realisation of the entire amount.
- iv) Rest of the judgment and award stands confirmed.
- v) Award be drawn up as per the above modification.
- vi) Needless to say that, if any, amount is paid as per the award passed by the tribunal, the same shall be adjusted in the modified award as above.
- vii) The appeal is accordingly disposed of.

(V.K. JADHAV)
JUDGE