

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

902 FIRST APPEAL NO. 164 OF 2017

RAMCHANDRA UTTAMRAO GHULE
VERSUS
DADASAHEB RAJENDRA JAYBHAY AND ANOTHER

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Advocate for Appellants : Mr. N. Y. Kingaonkar, h/f Mr. Santosh S. Jadhavar.
AGP for Respondent No.1 : Mr. Suresh W. Munde.
Advocate for Respondent No.2 : Mr. S. N. Pagare.

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CORAM : **V. K. JADHAV, J.**
DATE : 11th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar dated 6th August, 2013 in MACP No.298 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 / Claimant submits that initially the Tribunal by judgment and award dated 18th June, 2011 had partly allowed the claim petition and thereby directed the Respondents to pay jointly and severally an amount of Rs.5,00,000/- to the Claimant. The Appellant / Claimant had challenged the said judgment and award

by filing First Appeal No.3455 of 2011. This Court by order dated 6th August, 2012, partly allowed the said appeal and quashed and set aside the judgment and award passed by the Tribunal and remitted back the matter to the Tribunal for a decision afresh by considering the documents sought to be produced. This Court has further directed the Tribunal to consider the said documents on its own merits and after giving opportunity to the parties to lead the evidence on the same, shall decide the claim petition afresh. This Court has also directed that the evidence already led oral as well as documentary shall also be considered. Since the Appellant / Claimant has withdrawn the amount awarded by the Tribunal, this Court has further directed that the said amount be retained by the Appellant / Claimant as per the directions given in the operative part of the award and the Tribunal shall decide the claim petition afresh and thereafter, give further directions about the amount already adjudicated vide judgment and award dated 18th June, 2011. The learned counsel submits that thereafter, the Appellant / Claimant has adduced oral and documentary evidence in support of his contentions. The Respondents have not adduced any evidence and the Tribunal vide its impugned judgment and award dated 6th August, 2013 directed the Respondents to pay jointly and severally the compensation of Rs.5,18,000/- including NFL amount

with interest at the rate of 7.5% from the date of application till realization of the entire amount. The learned counsel submits that the Tribunal has awarded interest at the rate of 7.5% per annum instead of 9% per annum.

4 The learned counsel for Appellant submits that the Appellant / Claimant has examined witness Dr. Vijay N. Deshpande to prove the contents of disablement certificate Form Comp. 'B' Exhibit 33. Witness Dr. Deshpande has deposed before the Tribunal that the said certificate Exhibit 33 bears his signature and the Appellant / Claimant has got 100% permanent disability. He has further explained the same in his cross-examination that the Appellant / Claimant had the said injury over right upper limb. As per the contents of said certificate Exhibit 33, the Appellant / Claimant is suffering from paralysed right upper extremity grade zero and the permanent disability worked out is to the extent of 100%. The learned counsel submits that though the Tribunal has considered medical expenses to the tune of Rs.3,56,855/-, awarded very meager amount under the non-pecuniary heads such as pains and sufferings and loss of amenities in future life. The learned counsel submits that the Tribunal has not awarded separate amount under the head of permanent disablement. The learned counsel submits that though the Appellant /

Claimant has adduced oral and documentary evidence in support of his claim about loss of income from the post of NCC, which he was holding prior to the accident, the Tribunal has not considered future loss of income and only awarded an amount of Rs.18,000/- towards actual loss in the said income.

5 The learned counsel for Respondent / Insurer submits that this Court has remitted the matter back to the extent of consideration of the claim of the Appellant / Claimant in respect of loss of future income so far as the honorarium of Rs.900/- per month he was getting from NCC Post. The Tribunal in the earlier judgment and award dated 18th June, 2011, worked out the compensation to the tune of Rs.5,00,000/- and the said amount has been withdrawn by the Appellant / Claimant. The learned counsel submits that as such, the Appellant / Claimant is not entitled to raise other grounds to claim the compensation under different heads. The learned counsel submits that the Tribunal has awarded just and reasonable compensation. Further the Appellant / Claimant is not entitled to claim the loss of income so far as honorarium is concerned. The Appellant / Claimant cannot claim that amount as a matter of right. He was getting salaried income and he was rendering his services voluntarily to the said NCC program for which he was getting honorarium.

6 The learned counsel for Respondent / owner has also adopted the submissions made on behalf of the Respondent / Insurer.

7 I do not find any substance in the submissions made on behalf of the Respondent / Insurer that the claim of the Appellant / Claimant can be considered to the extent of loss of his income from the post of NCC, which he was holding prior to the accident and other grounds cannot be considered when the matter is remanded by this Court for consideration afresh to that extent only. This Court by order dated 6th August, 2012 quashed and set aside the entire judgment and award passed by the Tribunal and remitted the matter back for decision afresh by considering the documents and after giving an opportunity to both the sides to lead evidence. Though this Court had directed the Claimant to retain the amount, which he had already withdrawn, however, further directed the Tribunal to give further directions about the amount already adjudicated vide the judgment and award dated 18th June, 2011. In view of the same, the Appellant / Claimant is entitled to raise all grounds available to him as against the judgment and award passed by the Tribunal even after remand order is passed by this Court.

8 It appears from the evidence of witness Dr. Deshpande that the Appellant / Claimant has sustained limb wise disablement to the extent of 100%. On perusal of the permanent disablement certificate Exhibit 33 which is in Form Comp. 'B' and as per the oral evidence of witness Dr. Deshpande, right hand of the Appellant / Claimant is totally paralyzed and as such, there is 100% limb wise permanent disablement. Though the Tribunal has not observed specifically to that effect, it appears that the Tribunal has considered that the Appellant / Claimant has not sustained functional disability to the extent of 100%. The Tribunal has also considered that the Appellant / Claimant got promotion after the accident and there is substantial rise in his salary also. So far as salaried income is concerned, the Tribunal has rightly observed that there is no loss in future income as such.

9 The Appellant / Claimant is in service as a professor in Jamkhed Vidyalaya, Jamkhed and in addition to that he used to work as NCC Officer in 17th Maharashtra Bataliyan in NCC. At the time of accident, he was serving as Lieutenant. The Appellant / Claimant has placed on record the documents Exhibits 46/1 to 46/6. He was asked to tender his resignation so far as the post of Lieutenant in NCC is concerned. He was getting Rs.900/- per month as an honorarium. So

far as dictionary meaning of honorarium is concerned, as per Black's Law Dictionary, "a payment of money or anything else of value made to a person for services rendered for which fees cannot legally be or are not traditionally paid", called as honorarium. The online meaning of the word "honorarium" is that "a payment in recognition of acts or professional services for which custom or propriety forbids a price to be set".

10 In the instant case, the Appellant / Claimant was giving his services in addition to his job for which a propriety forbids a price to be set. However, in recognition of the said services, certain amount was being paid as an honorarium to him. It was not possible for the Appellant / Claimant to render the same services owing to the disablement sustained by him in the accident. However, the said amount cannot be taken as a loss in the income. However, the Tribunal has considered the said honorarium for certain period and awarded the compensation of Rs.18,000/-. Let it be as it is. However, the Appellant / Claimant is not entitled for the loss of future income so far as the said honorarium is concerned.

11 As per the contents of permanent disablement certificate Form Comp. 'B' Exhibit 33, there is a total loss of function of right limb

read with fracture clavicle and brachial plexus palsy. It has also been observed in the said certificate that there is no sensation, no power and paralyzed right upper extremity grade zero. Witness Dr. Deshpande has also stated in his evidence before the Court that the Appellant / Claimant has got 100% permanent disablement. Though on the basis of admission given by the Appellant / Claimant, the Tribunal has observed that the Appellant / Claimant has now developed a habit of teaching with the help of left hand and the said disablement has not affected his earning capacity in any manner, considering the nature of disablement and its consequences, the Appellant / Claimant is entitled for a separate amount under the head of permanent disablement, loss of amenities in future life and also for pains and sufferings. It appears that the Tribunal has not awarded the compensation separately under these three heads and awarded a *lump-sum* amount to the tune of Rs.1,43,145/-. The Appellant / Claimant is entitled for an amount of Rs.1,50,000/- for permanent disablement and same amount of Rs.1,50,000/- for loss of amenities in future life. It is a part of record that after the accident, the Appellant / Claimant was hospitalized for about one month and thereafter, the follow up treatment for months together and also underwent the operations. The Appellant / Claimant is thus, entitled for an amount of

Rs.1,00,000/- for pains and sufferings. The Appellant / Claimant is also entitled for an amount of Rs.10,000/- each for attendant and diet charges.

12 Thus, 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 medical expenses (as awarded by the Tribunal)	Rs.3,56,855/-
2)	Towards permanent disablement	Rs.1,50,000/-
3)	Towards loss of amenities in future life	Rs.1,50,000/-
4)	Towards pains and sufferings (as against Rs.1,43,145/- awarded by the Tribunal as <i>lump-sum</i> compensation under the heads of loss of amenities in future life and pains and sufferings)	Rs.1,00,000/-
5)	Towards loss of actual income from NCC Post (as awarded by the Tribunal)	Rs.18,000/-
6)	Towards attendant charges	Rs.10,000/-
7)	Towards special diet charges	Rs.10,000/-
	Total =	Rs.7,94,855/-

13 The Appellant / Claimant is entitled for the total amount of Rs.7,94,855/- with interest at the rate of 9% per annum from the date of application till realization of the entire amount. Thus, the judgment and award passed by the Tribunal 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 learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar dated 6th August, 2013 in MACP No.298 of 2005, is hereby modified in the following manner:

“The Respondents shall jointly and severally pay to the Petitioner, compensation of Rs.7,94,855/- (Rupees Seven Lacs Ninety-Four Thousand Eight-Hundred and Fifty-Five Only) including NFL amount with interest at the rate of 9% per annum from the date of application i.e. 6th June, 2005 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. Needless to say that since the Claimant has already withdrawn the amount as per the judgment and award passed by the Tribunal prior to remand, the

said amount of compensation shall be the part of the award after modification.

VI. The Appellant shall pay the deficit Court fees, if any, within four weeks from the date of this order.

VIII. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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