

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 1248 of 2001

Subhash Vitthalrao Yede,
age 40 years, Occupation
Service, R/at Sangamner,
District Ahmednagar

..Appellant/Orig.Claimant.

Vs

- 1) Hiramam Dipaji Bhalerao, adult,
Adult, Occupation Agriculture,
Residing at Bhalerao Sadan, Near
Marathi School, Ulhasnagar,
District Thane.
- 2) Siddharatha Sahaji Ahire,
adult, Occupation Driver,
residing at Manori, Taluka Sinnar,
District Nashik.
- 3) The Manager, Oriental
Insurance Co. Ltd.
Merchant Chambers, Shalimar,
Nashik.
- 4) The President of Sangamner Nagar
Parishad, Sangamner, District
Ahmednagar.
- 5) Ansar Yakub Shaikh,
Occupation Driver, R/o Naikwadipura

Sangamner, District Ahmednagar.

- 6) The Manager, The New India
Assurance Co. Ltd.
Near Wasan Automobiles, New Bombay
Agra Road, Nashik ..Respondents.

Ms. Madhura Deshmukh h/f Mr. S.S.Kulkarni, Advocate
for the Appellant.

Ms. Minal Chaudhari h/f Mr. J.S.Chandnani for
Respondent No.3.

CORAM : C.V. BHADANG, J.
DATE : 22nd May, 2017.

ORAL JUDGMENT:

1) The appellant/claimant in MACT Petition No. 528 of 1990 before the Motor Accident Claims Tribunal, Nashik ("Tribunal" for short), is seeking enhancement of compensation. The Tribunal by the impugned award has granted compensation of Rs.5000/- to the appellant along with interest @ 12% per annum.

2) The brief facts necessary for the disposal of the petition may be stated thus :

At the relevant time, the appellant was working as a storekeeper with the Sangamner Municipal Council. On 31.5.1990 a truck bearing No. MTD-4074 belonging to the Municipal Council was taken to Nashik for collecting iron sheets, which the Municipal Council had purchased. The appellant was one of the occupants of the truck. When the truck reached near village Malewadi on the Nashik Pune road, at about 9:00 p.m. it met with an accident involving a jeep bearing No. MXV-7551. In the accident the appellant suffered injury to his head, face and the left scapula. According to the appellant, the injuries have resulted into permanent partial disability to the extent of 50%. It is contended that the appellant was a "lefty" and used to write by his left hand and thus on account of the injury to the left scapula has suffered permanent partial disability. The appellant had restricted his claim for compensation to Rs. 1 lakh.

3) Before the Tribunal the appellant examined

himself along with one Ramesh who was a clerk working in the Health Department of the Municipal Council. The appellant neither examined any Medical Officer nor produced the disability certificate/medical certificate, showing the nature of the injuries.

4) The Tribunal decided MACP No 528 of 1990 along with other connected petitions by a common judgment and award dated 25th June, 1999 holding that the driver of the jeep was negligent. Be that as it may, in the present appeal we are only concerned with the quantum of compensation awarded to the appellant.

5) I have heard the learned counsel for the appellant and the learned counsel for the respondent no.3. With the assistance of the learned counsel for the parties, I have gone through the record and the impugned judgment.

6) It is submitted by the learned counsel for the appellant that the appellant has produced the disability certificate dated 15th September, 1992 showing that the

appellant has suffered fracture of the clavicle left side and to the effect that the appellant has restricted movement on account of same. The disability certificate is issued by the Medical Officer, Municipal Dispensary Municipal Council at Shrirampur. It is submitted that the Tribunal thus erred in awarding meagre compensation of Rs. 5,000/-. It is submitted that the appellant is suffering inconvenience in life on account of the injury and has difficulty in writing by his left hand and had also suffered in so far as his service career is concerned.

7) On the contrary, it is submitted by the learned counsel for the third respondent that the appellant has not demonstrated that he has suffered any actual or future loss of earning capacity. It is submitted that the evidence of the appellant, in fact, shows to the contrary as he had earned increments. It is submitted that in the absence of the examination of the medical officer, no reliance can be placed on the

injury certificate and as such compensation granted is reasonable and proper.

8) I have carefully considered the rival circumstances and submissions.

9) At the out set, it is necessary to mention that although the appellant has produced the injury certificate, the medical officer who is the author of the said certificate is not examined. The accident had occurred on 31st May, 1990 while the injury certificate shows that the appellant was examined in the OPD, more than two years thereafter i.e. on 15th September, 1992. Although the injury certificate mentions that the appellant had suffered fracture of the clavicle left side, the said certificate does not make any reference to any x-ray report either obtained immediately after the occurrence of the accident or at the time when the injury certificate is issued.

10) The learned counsel for the appellant has pointed out the medical certificate dated 14th

September, 1990 issued by Dr. Pathak from Sangamner who is a private practitioner in order to submit that the certificate shows the appellant having sustained fracture clavicle (left) with blunt injury to the left shoulder and disfiguration on his forehead due to lacerated wounds. The submission cannot be accepted. The appellant has not examined the said doctor in order to substantiate the medical certificate. The medical certificate dated 14th September, 1990 also does not refer to any x-ray report or x-ray examination conducted. None of these medical certificates have been formally "exhibited" before the Tribunal. I am conscious of the fact that the strict rules of procedure and evidence may not apply to the Tribunal. However, the Tribunal would expect some material on which the Tribunal can act while determining the extent of disability. In my considered view, no reliance can be placed on the medical certificate so produced.

11) It has come in the evidence of the appellant

that, he had sustained injuries to the left side scapula head and face. The appellant had also claimed that his writing capacity has been affected on account of the fracture to the left scapula. He further claimed that he was in the Sangamner Hospital for about one and half months and had spent Rs.12000/- to Rs. 15000/- for purchase of medicine from outside. He further claimed that he is suffering from pain due to the injuries. In Paragraph 5 of the evidence the appellant claims that he was getting gross salary of Rs.2200/- per month in the year 1990 and at the time when he gave evidence i.e. on 24th September, 1998 he was getting Rs.6,000/- per month. In the cross-examination on 25th September, 1998 the appellant claimed that he is getting Rs.9000/- per month towards salary. Thus, it cannot be accepted that the appellant suffered any loss of earning capacity. However, the evidence does show that the appellant had suffered injuries to his left scapula and head and face in the course of the accident. It has also come on record

that the appellant was all along treated in the Government Hospital. Although the appellant claims that he was required to purchase certain medicines from outside, no such bills of purchase of the medicines are produced. It further appears that there is no evidence that the appellant was required to take leave without pay or had suffered actual loss of salary. There is no evidence in this regard which is forthcoming on record. There is clear evidence that the appellant was drawing gross salary of Rs.2200/- per month in the year 1990, while he was getting gross salary of Rs. 9,000/- in the year 1998.

12) The Tribunal has refused to accept the case of the appellant that his writing capacity is affected as he is lefty on the ground that the appellant has not pleaded in the petition that he is a "lefty". The learned Counsel for the appellant has pointed out in the claim petition that the appellant had pleaded that he is a "lefty". The Tribunal has awarded compensation only on account of

mental shock and agony. In my considered view, looking to the nature of injuries which the appellant has stated in evidence and the fact that the appellant has pleaded and deposed that he is a “lefty” and thus has suffered in terms of writing capacity by his left hand, compensation of Rs.10,000/- can be awarded towards pains and suffering and another Rs.10,000/- towards the loss of convenience in life. Thus, the appeal is partly allowed. The Judgment and award of the Tribunal is modified. The appellant shall be entitled to get compensation of Rs.20,000/- along with interest as awarded. The rest of the Award is hereby confirmed. The appeal is partly allowed to the aforesaid extent, with no order as to costs.

(C.V. BHADANG,J)