

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.42 OF 2000

Gulam Nabi Mohammad S. Patel & Anr. Appellants

versus

Smt. Anita Ajit Pejawar & Ors. ... Respondents

**WITH
FIRST APPEAL NO.501 OF 1997**

National Insurance Co. Ltd. ... Appellant

versus

Smt. Anita Ajit Pejawar & Anr. ... Respondents

.....

- None for the Appellants in FA No.501/97.
- Mr.Rohan S. Darandale i/b. Mr.R.S. Datar, Advocate for the Appellant in FA No.42/00.
- Mrs.S.V. Sonawane, AGP, for Respondent No.2 in both the FAs.

**CORAM : C.V. BHADANG, J.
DATE : 24th MAY, 2017.**

ORAL JUDGMENT :

1. Both these appeals arise out of judgment and award dated 03/12/1996 passed by the learned Motor Accident Claims

Tribunal, Raigad, at Alibaug ('Tribunal' for short) in Accident Claim Case No.24/89.

2. The brief facts necessary for the disposal of these appeals may be stated thus;

That, on 04/09/1998 Smt. Anita Pejawar (the original claimant) was an occupant of jeep bearing No.MRA 5986. The said jeep was owned by one Mr.Prabhakar A. Phanse (original opponent No.2). The jeep was being driven by the owner himself. At about 05.00 p.m. when the jeep came in front of Garden Hotel at Panvel on the Bombay Pune Road, it met with an accident, involving an oncoming truck bearing No.MHD 1986 owned and driven by Mr.Gulamnabi Mohd. S. Patel (original opponent No.1). The National Insurance Company (original opponent No.4) and United India Insurance Co. Ltd. (original opponent No.3) are respectively the insurer of the jeep and the truck.

3. It is claimed that in the accident right hand of the

claimant Smt.Anita Pejawar suffered multiple fractures and inspite of treatment, it has been immobilized.

4. The claimant filed a Claim Petition u/s 110-A of the Motor Vehicles Act, 1939 (Old Act), claiming a compensation of Rs.2,50,000/-. The case made out in the petition was that the claimant is a Diploma holder in Arts and was taking tuitions and Yoga classes and earning Rs.1,800/- per month. It was contended that the accident occurred due to the composite negligence of the drivers of both the vehicles.
5. The petition was opposed by the owner and the insurer of both the vehicles. The owner and insurer of the two vehicles attributed negligence to each other. The insurer of the jeep also claimed that the liability of the occupant of the jeep was not covered under the policy of insurance. It was contended that the liability was limited to Rs.15,000/- as per the terms and conditions of the policy.

6. The learned Tribunal framed in all six issues including issue No.3 pertaining to negligence.
7. Before the Tribunal the original claimant Mrs.Anita Pejawar examined herself alongwith Jaywant Sinkar on the point of bills/expenses, incurred on the treatment. The claimant sought examination of the doctor, on commission, which was not accepted by the Tribunal.
8. The original opponent No.1 Gulam Nabi Mohammad S. Patel, the driver of the truck as well as opponent No.3 Prabhakar Phanse, the driver of the jeep examined themselves in support of their defence.
9. The Tribunal answered issue Nos.1 to 3 in affirmative holding that the accident was a result of the composite negligence of drivers of both the vehicles. The Tribunal refused to accept the contention of the insurer of the jeep that the risk of the occupant of the jeep was not covered. The Tribunal also

refused to accept the defence as to limited liability. The Tribunal then went upon assessing the quantum of compensation, under various heads and arrived at an amount of Rs.2,05,000/- which is apportioned equally between the owner and insurer of the jeep and owner and the insurer of the truck.

10. First Appeal No.501/97 is filed by National Insurance Company Limited, the insurer of jeep while First Appeal No.42/00 is filed by the owner and insurer of the truck.

11. None appeared for the appellants in First Appeal No.501/97. I have heard Mr.Darandale, the learned counsel appearing for the appellants in First Appeal No.42/00. There was no appearance on behalf of the original claimant. I have gone through the record and impugned judgment and award of by the learned Tribunal.

12. It is submitted by the learned counsel for the appellants (First Appeal No.42/00) that the accident was caused

solely due to the negligence in driving of the truck. It is submitted that the driver of the jeep had no role to play in the occurrence. It is submitted that the original claimant was interested in absolving the owner of the jeep in as much as the owner of the jeep was a friend of the husband of the claimant. It is submitted that in the absence of the examination of the doctor, the Tribunal could not have placed reliance on the nature and extent of the injuries. It is submitted that the Tribunal erred in holding that the claimant had suffered permanent partial disablement to the extent of 30%. It is submitted that no compensation could have been granted on account of expenses incurred for engaging a maid servant. It is also submitted that there is no acceptable evidence to establish that the claimant was taking tuition and Yoga classes and was earning Rs.1,800/- per month. It is submitted that the compensation of Rs.10,800/- granted on account of actual loss of earnings is incorrect.

13. I have carefully considered the circumstances and the

submissions made. It is necessary to first dwell on the issue of negligence, as it is the very basis for granting compensation in a claim of the present nature. The original claimant came with a case of composite negligence of drivers of both the vehicles being the cause of the accident. The original claimant Anita Pejawar can be said to be an eyewitness to the accident. We also have evidence of both the drivers. In this case undisputedly, it was the driver of the truck who was prosecuted, who has since been acquitted. The Tribunal has observed, and in my considered view rightly so that acquittal of the driver in the criminal case will not be decisive. The proof of negligence in claim of the present nature essentially proceeds on preponderance of probability, unlike in a criminal case where negligence has to be established beyond reasonable doubt. Thus the acquittal of the driver of the truck may not come in the way of the Tribunal in coming to an independent finding as to the cause of the accident.

14. It has come in the evidence of the claimant Smt.Anita that when the jeep reached near Garden Hotel, the 'lorry' came from the opposite direction and gave dash to the right side portion of the jeep. The jeep was in normal speed. She was sitting near the window. Because of the impact she suffered an injury to her right hand.

15. In the present case the occurrence of the accident, the involvement of the two vehicles in the same and the ownership of the two vehicles and factum of the two vehicles being covered by policy of insurance is not in dispute. It has come on record that at the time of accident there was a light rain/drizzle and the condition of the road was not fair. It has come in the cross examination of the claimant that jeep was belonging to a friend of her husband and they had gone on a family picnic and she was not a fair paying passenger. She denied that she had contributed as her hand was kept out of the window of the jeep. She denied that the National Insurance company i.e. the insurer

of the jeep was liable. It has further come in the cross examination that while the two vehicles crossed each other, they brushed on their right rear side. She denied that the driver of the jeep was responsible for causing the accident.

16. Mr.Gulamnabi the driver of the truck claimed that the jeep came from the opposite side in a high speed and in a ditch on the road, tire of the jeep burs, as a result of which the driver of the jeep could not take “right judgment” and the jeep gave a dash to the backside of the drivers cabin. He claimed that the glass of the jeep struck the hand of the claimant. He claimed that due to rain, the driver of the jeep could not see the ditch and the condition of the road was not fair. In the cross examination he stated that there was no much damage to the lorry. The width of the tar road was 22 ft and there were kaccha strips of 5 ft. on either side. He admitted that the driver side front wheel of his vehicle was damaged. He further denied that the truck was being driven in a high speed.

17. Mr.Prabhakar Phanse, the driver of the jeep claimed that the truck came from the opposite direction and the brushes against the jeep on the driver's side. He claimed that he was driving the jeep on the left side of the road. In cross examination this witness stated that he saw the lorry for the first time when it was at a distance of 300 ft to 400 ft. He also claimed that the driver side portion of his vehicle was damaged. He denied that he was driving in the centre of the road and was in a high speed.

18. It can thus been seen that drivers of both the vehicles are trying to attribute negligence to each other. It has come on record that on the spot of the accident, the road was 22 ft. wide with Kaccha patches of 5 ft width on either side. Thus, the road was sufficiently wide for the two vehicles to pass. The evidence clearly suggests that when the vehicles were crossing each other they brushed on their right side, causing injury to the claimant.

19. Although the driver of the truck has claimed that the front wheel of the jeep landed in a ditch, as a result of which the

tyre of the jeep burst, there is nothing on record, including the spot panchanama to suggest that the tire of the jeep burst. The panchanama shows that the front side wheel of the jeep was bent due to impact. This would be suggestive of the magnitude of the impact. It is thus not possible to accept and the Tribunal has rightly rejected the claim of the driver of the truck that it was because of the bursting of the tyre of the jeep that the accident occurred. Even assuming that the tire of the jeep got burst resulting into the driver of jeep losing control, the appellants cannot establish negligence of the driver of the jeep on such a hypothesis. It has come in the evidence of the driver of the jeep that for the first time he had seen the "lorry" when it was at a distance of 300 ft to 400 ft. He also admitted that at the time of accident, the jeep was posed so positioned as to leave three ft tar road on the left side open. It can certainly be said that the driver of the jeep had the last opportunity to avoid the impact, assuming that the oncoming truck was approaching at high speed. Taking an over all view of the evidence and the material on record a conclusion appears to be inescapable that

the drivers of both the vehicles had contributed equally in the occurrence of the accident. Negligence is basically, absence of duty to take care. In my considered view, the learned Tribunal is right in holding that if the driver of the two vehicle had exercised a little caution and taken care, the accident could have been avoided. Thus, no exception can be taken to the finding recorded by the Tribunal that there was composite negligence of both the drivers in causing the accident and they were equally responsible for the same.

20. This takes me to the issue of quantum. The Tribunal has awarded compensation under the following heads:

(i)	Compensation for injuries, pain and sufferings	Rs.50,000/-
(ii)	Expenses on treatment including the medicines	Rs.30,000/-
(iii)	Expenses on conveyance	Rs.10,000/-
(iv)	Expenses on account of special diet	Rs.5,400/-

(v)	Compensation on account of actual loss of earning for a period of six months	Rs.10,800/-
(vi)	Loss of amenities and enjoyment of life	Rs.25,000/-
(vii)	Compensation on account of 30% disability	Rs.45,000/-
(vii)	Compensation for employing a maid servant	Rs.28,800/-
	Total	Rs.2,05,000/-

As stated earlier the compensation is apportioned equally against the owner and the insurer of the jeep and the truck. The Tribunal has allowed interest at the rate of 12% per annum from the date of the petition, till realisation.

21. The Honourable Supreme Court in the case of **Rajkumar, vs., Ajay Kumar & Anr. (2011) 1 Supreme Court Cases 342**, has set out the general principles for grant of compensation, in injury cases. Para Nos.6 and 7 of the judgment, which are apposite, can be reproduced as under:-

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.*
- ii) Loss or earnings (and other gains) which the injured would have made had he not been injured, comprising:*
 - a) Loss of earning during the period of treatment;*
 - b) loss of future earning on account of permanent disability*

iii) Future medical expenses.

Non-pecuniary damages (General damages)

- iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
- v) Loss of amenities (an/or loss of prospects of marriage).*
- vi) Loss of expectation of life (shortening of normal longevity)*

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi)

relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

7. *Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.*

22. It can thus be seen that in routine personal injury cases the compensation will be awarded only under heads (i)(ii)(a) and (iv) and it is only in serious cases of injuries where there is specific evidence corroborating the evidence of the claimant, that the compensation will have to be granted under the heads (ii)(b), (iii), (v) and (vi).

23. Coming back to the present case, the Tribunal has not awarded any compensation under heads (ii)(b) i.e. loss of future earnings, (iii) i.e. future medical expenses and (vi) loss of expectation of life. Obviously, the claimant being married, neither the compensation was admissible nor it has been granted for loss of prospects of marriage. However, the Tribunal has granted Rs.25,000/- towards loss of amenities and enjoyment. Be that as it may be, the claimant had sought examination of the doctor on commission, which was not allowed by the Tribunal.

24. As noticed earlier the Honourable Supreme Court has

interalia held in case of Rajkumar (cited supra) that the assessment of pecuniary damages under Item No.(i) and under Item No.(ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. The assessment of non-pecuniary damages under item Nos.(iv)(v)and (vi) involves determination of lump sum amounts with reference to the circumstances such as age, nature of injury, disability suffered by the claimant and the effect thereof on the future life of the claimant. In the case of Rajkumar (supra) the Honourable Supreme Court was essentially concerned with the assessment of compensation on account of loss of future earnings. As noticed earlier it has not been granted in this case.

25. It has come in the evidence of the claimant that after the accident she was carried to KEM hospital at Bombay. She was operated upon. She was in the hospital from 04/09/1988 to 27/11/1988. Subsequently also she was required to take follow up treatment regularly upto 17/01/1989 by attending OPD. She

produced the receipts/bills including that of purchase of medicines. She is having pain in the hand. She cannot lift heavy articles or remove cooking utensils. She is also having difficulty in wearing a Sari and is taking help of others. She got herself examined from Dr. Govekar, who certified the disability to the extent of 40%, which is substantial.

26. The Tribunal has granted the actual expenses of treatment, conveyance and special diet including, loss of earning for six months during the period of treatment and towards the engagement of maid servant. The later is not a specific head under which normally the compensation is granted. The Honourable Apex Court has observed that the compensation under head (i) can also include some miscellaneous expenditure. Looking to the nature of the injuries and the fact that the claimant was in hospital for a long period and was required to take follow up treatment, I am not inclined to interfere with the said award, in the peculiar facts and circumstances of the case. It is true that the medical officer is

not examined in this case. However, it is borne out of record that the claimant had sought examination of the medical officer which the Tribunal did not accept as has been recorded in the impugned judgment. I do not find it appropriate to send the matter back to the Tribunal at this distance of time, the accident having occurred, as far back as, in the year 1988. I have carefully gone through the evidence of the claimant and the record in which the claimant has produced the photographs of the injury and the also the treatment papers. The Tribunal had also an opportunity to observe the claimant in person. The injuries are certainly serious and extensive. Strict rules of evidence do not apply to the proceedings before the Tribunal. Under the Act the Tribunal is required to determine just compensation, which is payable to the claimant. The question would essentially depend upon the facts and circumstances of each case. On a overall consideration of nature of the injuries and looking to the quantum of compensation granted it cannot be said to be either exorbitant or unjust. Thus in the peculiar facts and circumstances of the present case I am not inclined to

interfere with the quantum of compensation as awarded. In the result First Appeal No.42/2000 is hereby dismissed. First Appeal No.501/1997 is dismissed for want of prosecution. In the circumstances there shall be no order as to costs.

(C.V. BHADANG, J.)