

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 810 OF 2015

Kiran Raghunath Sangave ...Appellant
Versus
The Manager Director VRL Logistics Ltd & Ors ...Respondents

Mr SG Thorat, for the Appellant.
Mr Ketan Joshi, for Respondent No.3.

CORAM: G.S. PATEL, J
DATED: 3rd August 2017

PC:-

1. The matter was listed before the last Lok Adalat. It seems that a settlement is not possible. It is not necessary to go into the reasons why.
2. This is the original Claimant's Appeal against an order of 27th June 2014 in a Motor Accident Claim Petition. The case is one of a grievous injury, not a fatal accident.
3. On 4th January 2012, while the Claimant was proceeding towards Jaysingpur on his motorcycle, a truck No.MH-13/R-2408 driven by the original Opponent No.2 came in the opposite direction

and hit the Claimant's motorcycle. The 1st Opponent was the owner of the truck. The 3rd Opponent was the insurance company.

4. The Claimant was severely injured. He filed a claim for Rs.3,95,917/-. He said that he had suffered severe injuries to his eyes, ears, right leg and right hand. He was previously employed as a fitter. On account of these injuries he was unable to continue with that employment in the manner that he was doing previously, although he did not altogether lose his employment. A medical certificate was produced before the Tribunal. This disability certificate was issued by Dr Satishkumar Patil of the Patil Institute of Orthopaedic Sciences and Multispeciality Hospital, Jaysingpur. It reports a physical disability of 28%. This was as on 11th December 2012. It notes that there is highly restricted movement of the right hand, right knee, right hip and inability to sit cross legged, and difficulty in holding objects or doing fine work. I find that in the impugned order that disability certificate does not seem to have been considered at all. Had it been considered, the Tribunal would have had to address itself to whether this amounted to a 100% functional disability or lower percentage. However the Tribunal could not have altogether overlooked this aspect of the matter.

5. On behalf of the Appellant it is submitted that there is fresh material as of January 2016 to suggest that the physical impairment and disability is now 51%. This is additional evidence.

6. I also find that the manner in which the compensation was computed in paragraph 8 is incorrect. The learned Judge with

respect ought to have followed the principles in such cases as set out by the Supreme Court *inter alia* in *Raj Kumar v Ajay Kumar and another*.¹ Here, the proper approach in assessing working or functional disability and the question of loss of future earnings has been fully considered and the law laid down in that regard. There are illustrations provided in the judgment itself which provide instructive guidelines. Paragraph 8 of the impugned order is an unacceptable departure from these guidelines. The question of a multiplier would also have to be considered and this has also not been done in the judgment under Appeal. Viewed from any perspective it is not possible to sustain the impugned order.

7. The question arises whether the decree should be modified and substituted in this Court, which can always be done, or whether a further opportunity should be afforded to the Claimant given his financial status and the fact that if this Court in Appeal passes a decree, one entire right of a statutory appeal would be unavailable to the Claimant, should that be necessary. The learned Advocate for the Appellant submits that the matter should be remanded to be decided afresh in accordance with these observations but with additional liberty to the Claimant to lead further evidence and to enhance his claim as well. I think this is reasonable.

8. The impugned order is set aside. The Claim Petition No.27 of 2012 is restored to file. It shall be decided afresh by the Motor Accident Claims Tribunal (“**MACT**”), Jaysingpur. The Claimant will be at liberty to lead additional evidence. He will also be at liberty

¹ (2011) 1 SCC 343.

to amend the claim to increase the compensation claim. The Trial Court will allow the amendment application, it being made clear that the Opponents will be entitled to enter a supplementary written statement to deal with the amendment. The Opponents will also be at liberty to lead additional evidence. The Trial Court will dispose of the claim afresh without being influenced by the observations in the impugned order of 27th June 2014 but following the observations in this order, the applicable decisions of the Supreme Court and the observations in my judgment of 9th June 2017 in *Mahavir Sampat Keskar v Suresh Krishnaji Deshpande and others*.²

9. The MACT, Jaysingpur is requested to endeavour to dispose of the claim at the earliest, and in any event by 19th January 2018. While disposing of the claim as amended, the MACT will ensure that all the evidence that is placed before it is duly considered.

10. The Appellant has withdrawn the amount awarded. That amount will be retained with the Appellant. It is however clarified that in the final computation of the amount, if any, awarded to the Claimant, this amount with the interest accrued thereon will be taken into account.

11. The First Appeal is disposed of in these terms. No costs.

(G. S. PATEL, J.)

2 First Appeal No.493 of 2013.