

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

FIRST APPEAL NO.923 OF 2010

The Oriental Insurance Company,
Through its Branch Office at
Khamgaon, Taluka-Khamgaon,
Dit. Buldhana
Represented by Manager,
Oriental Insurance Company,
T.P. Hub Nagpur.

... Appellant.

-vs-

Vilas Dinkarrao Patil
(Since Deceased) Thr. Lrs

- i) **Ushatai wd/o Vilas Patil**
Aged-46 yrs.
- ii) **Abhijit s/o Vilas Patil**
Aged 22 yrs.
- iii) **Tejas Vilas Patil**
Aged-18 yrs.
- iv) **Sourabh Vilas Patil**
Aged-14 yrs.

Respondent No.(iv) being minor through
the Respondent No.1 mother, as natural guardian.
All r/o Bhalegaon, Tq. Malkapur, Dist. Buldhana.

2. **Laxman Maroti Narkhede,**
Aged Major, Occ. Nil,
R/o Gurudeo Nagar, Mozri
Tq. Tiwsa, Dist. Amravati

... Respondents.

WITH

FIRST APPEAL NO.432 OF 2011

1. **Vilas Dinkarrao Patil**
(Since Deceased) Thr. Lrs
- i) **Ushatai wd/o Vilas Patil**
Aged-46 yrs.
 - ii) **Abhijit s/o Vilas Patil**

Aged 22 yrs.

iii) Tejas Vilas Patil

Aged-18 yrs.

iv) Sourabh Vilas Patil

Aged-14 yrs.

Respondent No.(iv) being minor through
the Respondent No.1 mother, as natural guardian.
All r/o Bhalegaon, Tq. Malkapur, Dist. Buldhana.

... Appellants.

-vs-

1. Laxman Maroti Narkhede,

aged about major, resident of
Gurudeo Nagar, Mozri Tahsil Tiwasa,
Dist. Amravati
And
Nandura, Tahsil Nandura, Dist. Buldhana.

2. The Oriental Insurance Company Ltd.,

Branch Office at Khamgaon,
Tahsil Khamgaon, Dist. Buldhana

... Respondents.

Smt. M. Naik, Advocate for appellant in F.A. No.923/2010 and for
respondent Insurance in F.A. No.432/2011.

Shri K. S. Narwade, Advocate for respondent in F.A. No.923/2010 and for
appellant in F.A. No.923/2010.

CORAM : A.S.CHANDURKAR, J.

DATE : February 09, 2017

Common Judgment :

Both these appeals filed under Section 173 of the Motor Vehicles
Act, 1988 take exception to the judgment of the Claims Tribunal dated
27/04/2010 in MACP No.121/2004. By said judgment the Claim Petition
filed under Section 166 of the said Act has been allowed and compensation

for an amount of Rs. 21,94,543/- has been awarded. The appellant in F.A.No.923/2010 is aggrieved by the amount of compensation as granted as according to it the same is on higher side. The appellants in F.A.No.432/2011 seek further enhancement in the amount of compensation as awarded. Both the appeals are being decided together by this common judgment.

2. The facts in brief are that one Vilas Patil on 05/05/2003 was proceeding on his motorcycle from Khamgaon to Shegaon along with one Sanjay as a pillion rider. At about 10.45 am when they reached village Warkhed a jeep coming from the opposite side dashed the motorcycle as a result of which said Vilas Patil as well as the pillion rider fell down from the motorcycle. Said Vilas Patil sustained various injuries including fracture of the spinal cord and was required to be operated upon. On that basis he filed a petition under Section 166 of the said Act seeking compensation from the owner of the jeep and the Insurance Company with which it was registered. The claim as made was initially for an amount of Rs.5,00,000/- which was subsequently enhanced to Rs.50,00,000/-.

3. The application was opposed by the owner and insurer of the vehicle. A stand was taken that the accident occurred due to the negligence of the claimant and hence there was no liability to pay the compensation. In

the alternate it was prayed that the amount of compensation deserves to be proportionately reduced according to the negligence of the claimant.

In support of the claim the claimant examined himself as well as three doctors. No evidence was led by the owner or insurer of the jeep. The Claims Tribunal after considering the entire evidence on record came to the conclusion that the claimant was earning an amount of Rs.5000/- per month. By applying the multiplier of sixteen it was held that the loss of earnings was Rs.9,50,000/-. By considering the amount of Rs.10,34,543/- towards medical treatment total compensation of Rs.21,94,543/- came to be granted.

4. Smt M. Naik, the learned counsel for the appellant in F.A. No.923/2010 submitted that the Claims Tribunal erred in granting exorbitant compensation. It was submitted that there was no disability certificate on record placed by the claimant and that the document at Exhibit-43 has not been properly proved. The doctors who had been examined had deposed only with regard to the condition of the claimant when the accident took place and for a short period thereafter. There was no evidence placed on record to indicate any loss of income of the claimant as a result of the said accident. The income of the claimant was taken at Rs.5000/- per month without sufficient evidence. It was then urged that the claimant had also contributed for the occurrence of the accident and that no amount was deducted for the contributory negligence of the claimant. The cinema

theatre was claimed to be run was in partnership and therefore it could not be said that any loss was caused due to absence of the claimant as a partner. The original claimant expired during the pendency of the appeal and therefore no amount could be granted on account of pains, suffering and mental agony. It was thus submitted that if the entire evidence on record is considered properly, the compensation as granted by the Claims Tribunal deserves to be reduced.

The learned counsel placed reliance on the following decisions :

- a) *Naseeban and anr. vs. Surendra Pal and ors. 1996 ACJ 818*
- b) *Oriental Insurance co. Ltd. vs. Lallianswami and anr. (2011) I ACC 533*
- c) *Anand Ramkrishna Raikar and ors. v. Raghunath v. Keny and anr. 1996 ACJ 697*
- d) *Ponnumany alias Krishnan v. V. A. Mohanan (2008) 4 SCC 717*
- e) *Raj Kumar vs. Ajay Kumar and anr. (2010) IV ACC 815.*

5. Shri K. S. Narwade, the learned counsel for the appellant in F.A. No.432/2011 on the other hand submitted that on the basis of the evidence on record, it was clear that the claimant was entitled for higher compensation. He referred to the deposition of the witnesses examined to indicate the disability of the claimant and submitted that it was certified by Dr Shende that the disability suffered was to the extent of 55%. According to him, the driver of the jeep alone was negligent. This fact was clear from the First Investigation Report and the sketch of the spot. It was pointed out that the land of the claimant was required to be sold which reduced the income of

the claimant and his family. On account of disability suffered by the claimant there was total loss of income and this loss should not be taken to be in proportion of the disability. Future medical expenses had not been granted nor was any compensation granted towards expenses for nursing and for keeping an attendant. The inconvenience caused and hardship faced had also not been compensated. The interest was liable to be paid @ 9% per annum instead of 7.5% per annum. It was thus urged that if said compensation is calculated the claimant would be entitled for higher amount of compensation. In support of the prayer for enhancement in the amount of compensation, the learned counsel placed reliance on following judgments :

- a) *Sanjay Verma v. Haryana Roadways (2014) 3 Supreme Court Cases 210*
- b) *Rajesh and ors. v. Rajbir Singh and ors. (2013) 9 Supreme Court Cases 54.*
- c) *G. Ravindranath @ R. Chowdary v. E. Srinivas and anr. 2013 ALL SCR 2566*
- d) *Neeta w/o Kallappa Kadolkar and ors. v. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur (2015) 3 Supreme Court Cases 590.*
- e) *Jakir Hussein v. Sabir and ors. (2015) 7 Supreme Court Cases 252.*

6. With the assistance of learned counsel for the parties, I have perused the records of the case and I have given due consideration to their respective submissions. The following point arises for consideration :

“ Whether the amount of compensation as awarded by the Claims Tribunal is just and proper or whether said amount deserves to be increased/reduced ? ”

It may be noted that the original claimant expired on 23/03/2012 during pendency of the appeals. The proceedings are being prosecuted by his legal heirs.

7. The original claimant examined himself at Exhibit-38. In his deposition he has stated that a cinema theater was being run in partnership by him along with thirteen other partners. He had 12% share therein. He has further stated that he had about 44 acres agricultural land out of which 36 acres were sold after his accident. He has then deposed that he was not negligent while riding his motorcycle and that the entire negligence was that of the jeep driver. He has further deposed about the treatment taken by him after the accident. An amount of Rs.10,16,047/- was spent for medical care. He then stated that after the accident he was not able to stand on his own and required assistance. In his cross examination he stated that he was not having any documents to indicate his income either from the cinema theater or the agricultural land. The original claimant then examined Dr Ranjit Patil at Exhibit-57 who stated that the original claimant was under his treatment as an in-patient from 05/05/2003 to 09/06/2003. He deposed that even after his operation the original claimant was taking his treatment. In his cross-examination he stated that in about October 2009 also he had examined the original claimant and his disability was to the extent of 62-65%. Another witness examined was Dr Vivek Deshpande at Exhibit-58. He

deposed about the treatment taken by the original claimant and denied the suggestion that the ailment could not be completely cured. Dr Samir Dalvi at Exhibit-67 deposed about the treatment taken by the original claimant at Bombay Hospital. He stated that the original claimant was operated in the year 2005. In the year 2007 a further operation was performed by him and that there was no likelihood of the original claimant getting fully cured from the accident. The original claimant was again examined on commission on 16/02/2010 at Exhibit-76. He placed on record further documents to indicate his treatment and the medical expenses borne by him.

No evidence was led by the opponents in the claim petition.

8. The learned Member of the Claims Tribunal after considering the aforesaid evidence came to the conclusion that the driver of the jeep was negligent as he had not kept his vehicle on the left side of the road as could be seen from the spot panchanama at Exhibit-46. Considering the aforesaid evidence and in absence of any other material brought on record by the respondents, I do not find this finding recorded by the learned Member deserves to be modified. The ratio of the decision in **Anand Ramkrishna Raikar and ors.** (supra) cannot be applied to the facts of the case considering the nature of evidence on record.

9. On the aspect of disability of the original claimant, the medical

certificate at Exhibit-43 indicates fracture of L1 Vertebra. This has resulted in Paraparesis. This certificate has been issued by Dr Ranjit Patil and hence there is no reason to disbelieve his version. There is no serious challenge to the same in his cross-examination. The deposition of other two doctors supports of the claim of the claimant that he was permanently disabled and that he could neither walk nor do any other activities without any assistance. Their evidence further shows that for a considerable period after the accident, the original claimant was under treatment and even in the year 2010 he was required to be examined on commission. The accident had taken place in the year 2003.

Thus from the aforesaid evidence placed on record, the finding as to disability of the original claimant stands duly proved by him.

10. As regards the income of the original claimant it is to be noted that according to him he was working as a Manager at the cinema theater that was being run in partnership. He was getting salary of Rs.6,000/- per month. Similarly he was owning 45 acres of agricultural land and after the accident about 36 acres of said land was sold of. The revenue records at Exhibit-39 were placed on record in support thereof. Though it is true that documentary evidence with regard to the actual earning of the claimant was not placed on record, considering his holding of agricultural land along with his engagement as Manager of the cinema theater, the amount of Rs.5,000/-

per month as considered by the Claims Tribunal to be his income appears to be reasonable. This is after taking an overall view on the basis of the evidence on record and the observations of the Hon'ble Supreme Court in **Ponnumany** (supra). However the Claims Tribunal without making any deductions whatsoever has taken into account the entire figure of Rs.5,000/- per month for calculating his annual income at Rs.60,000/-. Considering the nature of disability suffered by the original claimant, his movements were drastically reduced. On that count, a deduction of an amount equivalent to 3/4 of the annual income is required to be made. On that basis his monthly loss of income would be Rs.1250/-. The annual loss of dependency therefore would be Rs.15,000/-. The multiplier of 16 has been rightly applied by the Claims Tribunal considering his age to be 37 years. On that basis and considering the evidence with regard to his permanent disability, the total loss of dependency would be Rs.2,40,000/-. The total loss of earning as calculated by the Claims Tribunal would therefore have to be modified.

11. Considering the ratio of the decisions in **Sanjay Verma, Rajesh and ors. and G. Ravindranath** (supra), the original claimant would also be entitled for amount of compensation for future treatment, on account of pain and sufferings in the accident along with charges for the attendant. The Claims Tribunal has awarded sum of Rs.1,00,000/- towards future treatment and sum of Rs.1,00,000/- for mental pain and agony. Considering the

evidence of the Doctors, it can be seen that though the accident took place on 05/05/2003, the original claimant was undertaking treatment for almost five years thereafter. He was required to be examined on commission in the year 2010 and even at that point of time, he was requiring assistance. Thus considering the aforesaid law, I find that the original claimant would be entitled to total amount of Rs.3,00,000/- towards future treatment. Considering the observations in *Naseeban and anr.* (surpa), instead of granting any amount towards pain and mental agony of the original claimant a sum of Rs. 3,00,000/- on account of loss of estate to the family can be granted. An amount of Rs.1,20,000/- for meeting the expenses of an attendant is also granted. This amount would come to Rs.7,20,000/-.

12. In so far as the amount of medical expenses borne by the original claimant are concerned, the Claims Tribunal awarded a sum of Rs.10,34,543/- for said purpose. This amount has been granted on the basis of documentary evidence produced by the original claimant. Grant of this amount does not deserve to be modified. Thus the total amount of compensation to which the original claimant would be entitled would be the same amount finally awarded by the Claims Tribunal. This is subject to modifying the amounts granted under various heads.

13. Though it was urged on behalf of the original claimant that

further amount of compensation deserves to be granted, considering the nature of evidence led by the original claimant I do not find that there is any scope to grant further compensation, considering the nature of evidence led by the original claimant. In my view the total amount of compensation awarded is fair compensation for the claim as made.

14. In view of aforesaid discussion, the point as framed is answered by holding that the total amount of compensation awarded by the Claims Tribunal is just and proper.

In the result, the judgment of the Claims Tribunal in MACP No.121/2004 dated 27/04/2010 stands confirmed subject to modifying the amounts granted under various heads.

Both the appeals are therefore dismissed with no order as to costs.

JUDGE