

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

4 FIRST APPEAL NO. 345 OF 2004

Sarjerao s/o Waman Khalate
age: 35 years, Occu. Agril.
R/o: Khalatewadi U/V Hatola
Tq. Ashti, Dist. Beed
by his next friend
Mangal w/o Sarjerao Khalate
Age: 28 years, Occu. Agril.
R/o Khalatewadi, U/V Hatola
Tq. Ashti, Dist. Beed.

... Appellant
(Orig. Claimant)

Versus

1. Sheetalkumar s/o Zumberlal Gandhi
Age: Major, Occu. Business as Jeep
Owner R/o Bajartal, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar

2. Mustaqchand s/o Aktar
Age: Major, Occu. Driver,
R/o Jamkhed, Tq. Jamkhed
Dist. Ahmednagar.

3. The Oriental Insurance Co. Ltd.
Division Officer Station Road,
Ahmednagar.

... Respondents
(Orig. Respondents)

...

Mr. L.R. Thakur Adv. h/f Mr. D.R. Jayabhar,
Advocate for the Appellant.
Respondent Nos. 1 & 2 duly served;
Mr. A.G. Kanade, Advocate for Respondent No.3.

...

CORAM : P.R. BORA, J.

DATED : 24TH SEPTEMBER, 2018.

ORAL JUDGMENT :

. The original claimant has preferred the

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present appeal seeking enhancement in the amount of compensation awarded to him by the Motor Accident Claims Tribunal, Beed in Motor Accident Claim Petition No.462 of 1999 filed by him decided on 25.10.2002.

2. The appellant had filed the aforesaid claim petition seeking compensation for the injuries caused to him in road accident happened on 12.11.1998 having involvement of a Jeep bearing Registration No. MH-16-C-7218 owned by respondent no.1 and insured with respondent no.3.

3. It was the contention of the appellant that at the relevant time he was proceeding on his motorcycle and was dashed by the offending jeep and in the accident so happened, he suffered multiple injuries. The appellant had alleged that the accident happened because of the negligence of the jeep driver. It was the further contention of the appellant that because of the injuries caused to him in the alleged accident, he was subjected to undergo long medical treatment and incur huge expenses on his treatment. It was also his

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contention that because of the injuries caused to him in the alleged accident, he suffered permanent disability to the extent of 30%. At the time of the accident, age of the appellant was about 35 years and he was stated to be earning Rs. 3000/- per month from the work of selling milk. The appellant had claimed compensation of Rs. 2,00,000/- from the owner, driver and insurer of the offending jeep.

4. The claim petition was resisted by the respondent-insurance company. In order to substantiate the contentions raised in his claim petition, the petitioner himself deposed before the Tribunal and also examined Dr. Golhar, who has issued permanent disability certificate in his favour. Evidence of Shri Milind Shantaram Jadhav was also adduced to prove the medical expenses. The learned Tribunal after having assessed the oral and documentary evidence brought on record, awarded him the total compensation of Rs. 62,702/- jointly and severally from respondent nos. 1 to 3 inclusive of the amount of NFL compensation. Aggrieved by the judgment and award so passed, the appellant-

claimant had preferred the present appeal.

5. The learned counsel appearing for the appellant submitted that the learned Tribunal has failed in appreciating that because of the injuries suffered by the appellant and the permanent disablement incurred by him, his future earning capacity has been adversely affected. In the circumstances, according to the learned counsel, the amount of compensation awarded by the Tribunal to the tune of Rs. 20,000/- under the head of pain and suffering loss of amenities etc. is too meager and needs to be enhanced.

6. The learned counsel further submitted that towards the medical expenses also the Tribunal has not awarded the adequate compensation. The learned counsel further submitted that in fact the amount of compensation as was claimed by the appellant was too reasonable and in the circumstances, the claim petition must have been allowed in toto. The learned counsel, therefore, prayed for adequate enhancement in the amount of compensation.

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7. The learned counsel appearing for the insurance company supported the impugned judgment and award. The learned counsel submitted that a well reasoned judgment has been passed by the Reference Court considering each and every aspect, which was brought before it and as such no interference is required in the award so passed. The learned counsel submitted that since, the Tribunal has awarded the just and fair compensation, no case is made out for any enhancement in the said amount.

8. I have carefully considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-insurance company. I have perused the impugned judgment as well as the evidence on record. Though, amount of Rs.1,00,000/- (Rupees One Lakh) was claimed by the appellant towards the medical expenses the appellant could not prove the medical expenses incurred to that extent. As I noted herein-above, PW-3 Milind was examined in order to prove the medical expenses. In his evidence, medical bills

were duly proved and were marked as Exhibit-48 to Exhibit-99. The learned Tribunal has awarded the entire said amount which comes only to Rs. 14,702/-. In absence of any cogent evidence about the other medical expenses, the learned Tribunal has rightly refused to grant the said expenses on the bare statement of the appellant-claimant. It does not appear to me that any enhancement is warranted in the amount of medical expenses awarded by the Tribunal.

9. Towards the expenses of attendant, diet, conveyance etc, the Tribunal has awarded the sum of Rs. 10,000/-. In so far as loss of earning during the treatment period, the Tribunal has awarded the amount of Rs. 18,000/-. It was the case of the appellant himself that his monthly income was Rs. 3,000/- per month. From the evidence on record, the period of treatment at the most can be said to be of six months. The Tribunal has therefore, awarded the said loss of Rs. 18,000/-. It does not appear to me that any case is made out for enhancement in the said amount of compensation.

10. The learned Tribunal has awarded the compensation of Rs. 20,000/- towards pain and suffering, loss of amenities, and expectation of life. The learned counsel for the appellant was more persuasive in submitting that the amount so awarded by the Tribunal is wholly unjust and inadequate. The learned counsel submitted that having regard to the disablement incurred by the appellant, much more amount could have been granted by the Tribunal. Though, it is the contention of the appellant that because of the injuries caused to him in the alleged accident and because of the permanent disability incurred by him, out of the said injuries the income capacity has been affected to a large extent, in his testimony before the Court, only one line statement is made by him that since, the time of his accident, he is not in a position to do any work. Secondly, though the appellant-claimant examined Dr. Kisan Golhar (PW-2) nothing has been brought on record through his evidence that the permanent disability as was certified by the said witness was having any effect of adversely affecting the earning capacity of the appellant-claimant and if yes to what extent.

11. The learned Tribunal has elaborately discussed the evidence on this point. After having considered the entire evidence on record, it is apparently revealed that the appellant-claimant has not placed on record sufficient evidence so as to substantiate the said contention. However, in spite of the facts as aforesaid, it appears to me that the amount of compensation of Rs. 20,000/- as has been awarded by the Tribunal towards pain and suffering and loss of amenities in life etc. is unjust and inadequate. It cannot be loss of sight of that because of the injuries caused to the appellant-claimant and the permanent disablement incurred by him because of the said injuries, the appellant-claimant may not be able to enjoy the amenities of life for rest of his life as are enjoyed by a normal person. It also cannot be ignored and disbelieved that the disablement so caused to the appellant would certainly have some effect on his earning capacity and the appellant-claimant may not be able to carry out his work with the same capacity as was being carried out by him before his meeting with the accident. The age of the appellant-claimant at the time of accident was

35 years. There is no much dispute about the income of the appellant-claimant as has been stated by him in the claim petition. Having considered the facts as aforesaid, it appears to me that the compensation needs to be enhanced under the said head. After having gone through the entire evidence on record, it appears to me that a consolidated sum of Rs.1,00,000/- (Rupees One Lakh) would be a just and fair compensation payable to the appellant-claimant towards pain and suffering, loss of amenities in life, loss of future income etc. In the result, the following order is passed:

ORDER

1. Appellant is held entitled for the enhanced compensation of Rs.80,000/-.
2. Respondent Nos.1 to 3 shall, jointly and severally, pay the enhanced compensation of Rs.80,000/- to the appellant-Claimant with interest thereon at the rate of 9 per cent per annum from the date of filing the appeal, i.e. from 04.04.2003 till its realization.
3. The appeal stands partly allowed in the aforesaid terms.

(P.R. BORA, J.)