

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

FIRST APPEAL NO. 4806 OF 2017

Vijay s/o Machindra Dhere,
age 37 years, occ. Agriculture,
r/o Sarola Kasar, Tq. Nagar,
District Ahmednagar ...Appellant

VERSUS

- 1] Nilesh s/o Hiranman Hire,
age Major, occ. Doctor,
r/o Plot No.56, Ganesh Colony,
Back to G.S.High School,
Pachora, Jalgaon-424201,
- 2] Branch Manager,
Iffco Tokio Gen. Insurance
Co. Ltd., Divisional Office
at Kings Road, Abbat Building,
Near Ashoka Hotel,
Ahmednagar ...Respondents

...

Advocate for Appellant : Mr. D.R.Markad
Advocate for Respondent no. 1 : Mr. R.B.Temak
Advocate for Resp. no. 2 : Mr. S.G.Chapalgaonkar

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING	
THE JUDGMENT	: 04.09.2018
DATE OF PRONOUNCEMENT	
OF JUDGMENT	: 21.09.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal at Ahmednagar, in Motor Accident Claim Petition No. 46 of 2013 awarding total compensation of Rs. 1,14,839/-. No cross-objection is filed by the respondents. Therefore, in this appeal I have to only consider what is the appropriate quantum of compensation to be awarded to the original claimant/appellant.

2. Learned counsel for the appellant submits that compensation of Rs. 60,000/- is awarded in lump sum and separate compensation is only awarded under the heads of medical bills, special diet and attendance and transportation charges. According to him, compensation must be awarded under different heads including :

- 1) Loss of future income
- 2) Loss of actual income
- 3) Medical expenses
- 4) Attendance and conveyance charges

- 5) Special diet and nutrition
- 6) Loss of amenities in future life
- 7) Pain and suffering

3. Heard strenuous arguments submitted by Shri D.R.Markad, learned counsel for the appellant, Shri R.B.Temak, learned counsel for respondent no.1 and Shri S.G.Chapalgaonkar, learned counsel for respondent no.2.

4. Learned counsel for the appellant places reliance on the judgment in the case of **"Rekha Jain vs National Insurance Company Limited"** [AIR 2013 SC 3429], wherein the Apex Court ruled that in granting compensation for personal injury the injured has to be compensated under different heads, which are stated in above paragraph.

5. Recently, in the judgment, in the case of **"Anant s/o Sidheshwar Dukre vs Pratap s/o Zhamnnappa Lamzane and another"**, decided by the Apex Court in Civil Appeal No. 8420 of 2018,

delivered on 21.8.2018, the Apex Court has specified the above referred heads under which compensation is to be awarded to the claimant in injury claim.

6. Thus, learned counsel for the respondents supported the judgment passed by the Tribunal, on the ground that as there was no loss of future earning capacity to the claimant, the compensation in lump sum was rightly awarded in view of law settled by the Apex Court that compensation in lump sum should be awarded.

7. In the case at hand, under the head of loss of future income, no compensation can be awarded to the claimant for the reason that though Dr. Pandit (PW 2) has duly proved 30 per cent permanent disability to the claimant, claimant Vijay Dhore (PW 1) has admitted in his cross-examination that he is not removed from the service on account of his disability. Even Ramdas Aher (PW 3), who is examined to prove income of the claimant, has admitted the same thing. When,

despite disability, the claimant continued his service in the Karachiwala Gas Agency, there is no loss of future income to the claimant on account of his permanent disability. No evidence is placed on record by the claimant to prove that after the accident his payment was reduced by the employer on account of his disability. In the circumstances, I have no hesitation to hold that under the head of loss of future income no compensation can be awarded to the claimant.

8. While considering the compensation to be awarded under the head of loss of actual income, it is to be considered as to for how many days the claimant was hospitalized or bed ridden. In the case at hand, the accident occurred on 20.11.2012 and immediately claimant was admitted in Anand Rushi Hospital, Ahmednagar and he was discharged on 27.11.2012. Thereafter, he obtained treatment as OPD patient in the Orthopedic Hospital of Dr. Pandit (PW 2). Dr. Pandit (PW 2) nowhere deposes that the claimant was bed ridden even after 27.11.2012. Therefore, only one inference can be

drawn that the claimant was bed ridden only for seven days i.e. from 20.11.2012 to 27.11.2012. During this period, certainly he lost his daily wages as labour.

9. No evidence has been brought on record by the claimant about his income from agricultural land or from milk vendor business. Even the witness Ramdas Aher (PW 2), who claims to be the Manager of Karachiwala Gas Agency, cannot prove the daily wages of the claimant, as his oral version is not corroborated by salary register maintained by the Gas Agency. Therefore, considering the minimum wages of unskilled labour, notional income of the claimant is calculated at Rs. 6,000/- per month i.e. Rs. 200/- per day. Thus, for the hospitalization period of seven days, the claimant is entitled to compensation of (Rs.200 x 7) Rs. 1,400/- under the head of loss of actual income.

10. While considering the amount of compensation under the head of medical expenses, it is to be noted that though claimant has filed bunch

of medical bills with list (Exh. 37) amounting to Rs. 99,982/-, he has not proved the medical bills placed on record. The respondent Insurance Company has only admitted medical bills worth Rs. 39,838/-. Therefore, under this head compensation of Rs. 39,838/- only can be granted.

11. The Tribunal awarded compensation of Rs. 5,000/- under the head of transportation charges, which is not disputed by the respondents. This compensation appears to be adequate and reasonable. Therefore, under the head of conveyance charges, compensation of Rs. 5,000/- needs to be awarded.

12. The Tribunal has awarded Rs.10,000/- towards special diet and attendance. As the claimant was hospitalized for seven days on account of head injury and fracture injury, somebody must have been deputed to attend him for seven days. If the expenses of one person at out station is considered, it cannot be less than Rs.1,000/- per day. Therefore, (Rs. 1000 x 7) Rs.7,000/- is to be awarded under the head of attendant charges and Rs.

20,000/- has to be awarded under the head of special diet and nutrition.

13. Mistake committed by the Tribunal while awarding compensation is, no compensation is awarded under the head of loss of amenities in future life as well as under the head of pain and suffering. From the evidence of Dr. Pandit (PW 3), it has been brought on record that on account of 30 per cent permanent disability of claimant he has restrictions of left wrist movement, there is stiffness to his left hand and finger grip has become loose. He was unable to walk properly and due to head injury there is loss of memory and confusion in his mind. Thus, certainly in view of this permanent disabilities, for the entire future life, the claimant would not be able to walk properly and to use his left hand in normal manner. This life long deformity to the claimant is certainly sufficient to award at least Rs. 1,00,000/- under the head of loss of amenities in future life and Rs. 50,000/- under the head of pain and suffering.

14. Thus, the claimant is entitled for compensation under different heads as follows :-

Sr. No.	Particulars	Amount of compensation awarded (Rs.)
1.	Loss of future income	Nil
2.	Loss of actual income	1,400.00
3.	Medical expenses	39,838.00
4.	Attendant and conveyance charges (Rs.7,000+5000 respectively)	12,000.00
5.	Special diet and nutrition	20,000.00
6.	Loss of amenities in future life	1,00,000.00
7.	Pains and suffering	50,000.00
Total :		2,23,238.00

15. Thus, the claimant is entitled for total compensation of Rs. 2,23,238/- (Rs. Two Lac Twenty Three Thousand Two Hundred Thirty Eight Only). The claimant is also entitled to simple interest at the rate of nine percent per annum on this amount of

compensation from the date of application till the date of payment by both the respondents, who are jointly and severally liable for the same.

16. First Appeal No. 4806 of 2017 is accordingly allowed with no order as to costs. Civil Applications, if any pending, are accordingly disposed of.

sss

[SUNIL K.KOTWAL, J.]

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