

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

FIRST APPEAL NO. 4807 OF 2017

Gulab s/o Changdeo Kale,
age 31 years, occ. Agriculture
and service,
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. 125 of 2013 by the claimant. Respondent no.1 is the owner of the offending vehicle. Respondent no.2 is the insurer Insurance Company.

2. Undisputedly, on 20.11.2012 the claimant, who was about 26 years old young person, was riding the motor cycle No. MH-16/AF-1741, from Sarola Kasar to Ahmednagar by Nagar-Daund road. One friend of claimant, namely Vijay Dhole was the pillion rider. At about 8.00 a.m. Maruti Car No. MH-19/BJ-2288 (hereinafter referred to as, 'the offending vehicle') came from Ahmednagar side and dashed against the motor cycle of the claimant.

3. Contention of the claimant is that the accident occurred due to rash and negligent driving by the offending vehicle. In that accident,

claimant sustained severe head injury and fracture injury, which resulted into his permanent disablement. Therefore, claimant filed Claim Petition for recovery of compensation of Rs. 40 Lacs.

4. 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.

5. Learned counsel for the appellant submits that the present appeal is preferred only for enhancement of compensation and no Cross-objection or Cross appeal is filed by any of the respondents. In view of the submissions of the parties, in this appeal, the discussion will be restricted only with the quantum of compensation amount.

6. Learned counsel for the appellant submits that though after the accident from 20.11.2012 to 28.1.2013 the claimant was hospitalized in various

Hospitals for medical treatment and fracture of bone treatment, the Tribunal did not award compensation for this period under the head "actual loss of income". His next submission is that the loss of future income is erroneously calculated by the Tribunal by considering only monthly income of the claimant as multiplicand. He submits that the Tribunal should have considered total annual income of the claimant and thereafter should have applied the multiplier to ascertain correct sum of loss of future income.

7. Next limb of argument of the learned counsel for the appellant is that due to permanent disability the claimant has lost 100 per cent earning capacity. That needs to be taken into consideration. He also submits that 40 per cent income is to be added under the head "loss of future prospects" in view of recent verdict in the case of **"Natiaonal Insurance Company Limited vs Pranay Sethi and others"** [(2017) 16 SCC 680]. He submits that the Tribunal should have awarded compensation under various heads i.e. damages for

loss of amenities in future life, for loss of expectation of life, inconvenience and mental stress in life. He placed reliance on "**Rekha Jain vs National Insurance Co. Ltd.**" (AIR 2013 SC 3429).

8. Learned counsel for respondent no.2 fairly concedes that annual income of the claimant should have been considered by the Tribunal while assessing the loss of future income of the claimant. However, his objection is that monthly income of the claimant is not duly proved, as the witness examined by the claimant has not brought on record documentary evidence to prove monthly income of the claimant or to prove his own authenticity to depose on behalf of the employer of the claimant.

9. His next objection is that Dr. Pandit (PW 2) examined by claimant is not Neuro Surgeon and his evidence is of no value to prove 100 per cent disability of the claimant.

10. It is not disputed in between the parties that in the case of Motor Accident Claim Petition, "claims for injury", the compensation is to be assessed separately as pecuniary damages and special damages, as ruled by the Apex Court in the case of **Rekha Jain** (supra). The pecuniary damages are those which are actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. Pecuniary damages may include, (i) medical attendance; (ii) loss of earning profit, up to the date of trial; (iii) other material loss. Non-pecuniary damages may include, (i) damages for mental and physical shock; pain and suffering, already suffered or likely to be suffered in future; (ii) damages for loss of amenities in future life which may include variety of matters on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in the life.

11. In the case of **"Rajkumar vs Ajaykumar"** (2011 1 SCC 343), the Apex Court held that :

" Where the claimant suffers a Permanent Disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the Permanent Disability on his earning capacity. The effect of the Permanent Disability on the earning capacity of the injured must be considered; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings suffered by the claimant."

12. While assessing "just and reasonable compensation", I have to first ascertain the annual income of the injured and loss of earning capacity of claimant on account of permanent disability sustained by the claimant.

13. Learned counsel for respondent assailed the evidence of Dr. Rahul Pandit (PW 2), who is Orthopedic Surgeon and who treated the claimant for fracture injury and subsequently issued permanent

physical disability certificate (Exh. 36) certifying 66 per cent permanent disability to the claimant.

14. Learned counsel for respondent no.2 has drawn my attention to cross-examination of this expert witness, wherein he has admitted that Neuro Surgeon is the best person to assess disability due to head injury and discharge summary of Sahyadri Hospital (Exh.37) showed the condition of claimant as better orientation, improved in attention, recall registration and language. He submits that Dr. Pandit (PW 2) cannot prove 66 per cent permanent disability which includes disability due to head injury.

15. However, I do not find any merit in the said objection for the reason that Dr. Pandit (PW 2) also treated the claimant from 23.1.2013 to 28.1.2013 as indoor patient for operation of fracture of radius of the left hand who subsequently examined the claimant as outdoor patient for number of times. Therefore, when

before issuing injury certificate this witness has examined the claimant and assessed his disability after perusing the medical papers of previous treatment undergone by claimant at various Hospitals, the finding of this independent expert witness cannot be discarded only on the ground that he is not Neuro Surgeon. I hold that this witness is absolutely reliable and he has proved that permanent physical disability of the claimant is 66 per cent as mentioned in the certificate (Exh. 36) and the claimant has " hemispheres of left side, loss of memory, altered consciousness, inability to speak properly, clumsiness and no grip in left wrist and hand and stiffness in the left upper limb.

16. It is to be noted that by examining Asha Kale (PW 1) the wife of claimant, the claimant has proved that before the occurrence of the accident, he used to work as Coolie in Karachiwala Gas Agency for loading and unloading the gas cylinders. Even her oral testimony is corroborated by the testimony of Ramdas Nivruti Aher (PW 3), who works as a

Manager in the said Gas Agency. Asha Kale (PW 1) has also made it clear that after the accident due to permanent disability the claimant cannot do any work regarding lifting of articles as the claimant has lost power of his left part of the body. He could not balance himself properly. Her testimony is fully corroborated by the deposition of Pandit (PW 2). Therefore, considering the earning capacity of claimant prior to the accident as Coolie, it can be easily inferred that after sustaining permanent disability as specified by Dr. Pandit (PW 2), the claimant has lost 100 per cent earning capacity as unskilled labour or Coolie.

17. While assessing loss of future income due to permanent disability, I have to first ascertain what is the annual income of claimant prior to the occurrence of the accident. No doubt, by examining Ramdas Aher (PW 3) the claimant has brought on record that he used to work as Coolie in Karachiwala Gas Agency, Ahmednagar and he used to earn Rs. 300/- per day for 25 days in a month. However, from the cross-examination of this

witness, it emerges that though record regarding daily payment of the labours is maintained by the said Gas Agency, the same is not brought before the Court. Even the authority letter to depose on behalf of the Gas Agency or an identity card of this witness as a Manager of the Gas Agency is not produced before the Court. Therefore, on the basis of evidence of Ramdas Aher, which is not supported by payment register of Gas Agency, the claimant cannot prove that he used to earn Rs. 300/- per day by labour work in Karachiwala Gas Agency.

18. Otherwise also, at the time of accident, the claimant was about 26 years old young person and he was able bodied person. Therefore, even in absence of any authentic evidence about exact income of the claimant, if the minimum wages of unskilled labour of the year 2012 are considered, the notional income of the claimant cannot be less than Rs. 6,000/- per month.

19. Accordingly, I hold that the annual income of the claimant is $(Rs.6000 \times 12) = Rs.$

72,000/-.

In "**Jagdish vs Mohan and Others**" [(2018) 4 SCC 571], three Judges' Bench of Apex Court rules that even in injury claims while calculating loss of income, the loss of future prospects needs to be considered, in accordance with law laid down by the Apex Court in the case of **Pranay Sethi** (supra). In the present case the claimant being 26 years self-employed person, an addition of 40% of established income should be made. Thus, loss of annual income of the claimant is Rs.72,000 + Rs.28,800 = Rs.1,00,800/-.

The claimant being 26 years young person, as ruled by the Apex Court in the case of "**Smt. Sarla Verma and others s Delih Transport Corporation and Anr**" [AIR 2009 SC 3104], the multiplier of 17 (seventeen) will be applicable. Thus, total loss of income of the claimant due to loss of 100 per cent earning capacity can be assessed at (Rs.1,00,800 x 17) = Rs.17,13,600/-.

From the papers placed on record by the claimant, it emerges that the claimant was hospitalised from 20.11.2012 to 28.1.2013 for treatment of head injury and fracture injury. Thus for the period of 72 days, the claimant had lost his income. Considering the notional income of the claimant as Rs. 6,000/- per month i.e. Rs. 200/- per day, actual loss of income of the claimant on account of hospitalization is (72 days x Rs. 200/-) = Rs. 14,400/-. Thus, compensation of Rs. 14,400/- is to be awarded under the head "loss of actual income".

The respondents have admitted medical expenses bill of Rs. 9,85,026/-. Other bills of medicine are not proved by the claimant. Therefore, under the head "medical expenses" compensation of Rs. 9,85,026/- is to be awarded.

For medical treatment the claimant was moved for different hospitals including one Hospital at Pune. Therefore, compensation of Rs. 30,000/- needs to be awarded under the head of conveyance charges. As the claimant has lost balance, grip of left hand and as he has frequent

loss of memory, he needs to be attended by some attendant. Compensation of Rs. 60,000/- is reasonable under the head of "attendance charges".

In view of physical condition of the claimant, he needs special diet and nutrition. Therefore, compensation of Rs. 80,000/- will be most reasonable under the head of "special diet and nutrition". The claimant has lost his ability to move without the help of any support and he is not able to hold any article in his hand due to loss of grip and partial movement of left arm. There is partial loss of memory also. Therefore, under the head of "loss of amenities in future life", compensation of Rs. 1,00,000/- needs to be awarded.

Considering the nature of injuries sustained by the claimant and various surgeries undergone by him due to injuries, under the head "pain and suffering", compensation of Rs. 1,00,000/- will be reasonable.

20. Thus, total compensation to be awarded is set out as under :

Sr. No.	Particulars	Amount of compensation awarded (Rs.)
1.	Loss of future income	17,13,600.00
2.	Loss of actual income	14,400.00
3.	Medical expenses	9,85,026.00
4.	Attendant and conveyance charges (Rs.60,000+30000)	90,000.00
5.	Special diet and nutrition	80,000.00
6.	Loss of amenities in future life	1,00,000.00
7.	Pains and suffering	1,00,000.00
Total :		30,83,026.00

21. Accordingly, I conclude that the appellant is entitled for total compensation of Rs.30,83,026/- (Rs. Thirty Lac Eighty Three Thousand Twenty Six Only) along with simple interest at the rate of nine per cent per annum from the date of application made before the Tribunal till the date of payment from both the respondents who are jointly and severally liable

for the same.

22. First Appeal No. 4807 of 2017 is accordingly allowed to the above extent with costs. Civil Applications, if any pending, are disposed of accordingly.

[SUNIL K.KOTWAL, J.]

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