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

FIRST APPEAL NO. 1174 OF 2017

Ram Laxman Gaikwad
Age; 28 years, Occupation; Mason,
Resident; Apatgaon -2, Post Bhalgaon,
Taluka & District; Aurangabad. **APPELLANT**
(Original Claimant)

VERSUS

1) Anil Rambhau Raut,
Age; Major, Occupation; Driver,
Resident; Double Jin, Old Jalna,
Taluka & District Jalna
(Owner and Driver)

2) Divisional Manager,
National Insurance Company Ltd.,
Hazari Chambers, Station Road,
Aurangabad. **RESPONDENTS**
(Original Respondents)

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Shri Amol P. Khedkar, Advocate for Appellant
Shri A.B. Gatne, Advocate for Respondents
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 6.9.2018
Date of Pronouncing Judgment : 24.9.2018

J U D G M E N T :

This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as "MACT"), Aurangabad in M.A.C.P. No. 340 of 2013. The appellant is the Original Claimant and Respondent No. 1 is the owner and driver of Ape Rickshaw bearing No. MH-44-6439, involved in the accident, resulting into permanent disability to the appellant (Hereinafter referred to as "offending vehicle"). Respondent No. 2 is the Insurance Company with whom the offending vehicle was insured on the date of accident. This appeal is preferred only for enhancement of compensation. No Cross Objection is filed by any of the respondents. Therefore, though, learned counsel for respondent no. 2 submits regarding lack of evidence about rash or negligent driving of offending vehicle, the same needs no consideration. The entire discussion will be restricted with quantum of compensation to be awarded to the appellant.

2. The learned counsel for claimant Mr. Amol Khedkar, submits that though permanent disability certificate (Exh. 26) proved by the Doctor who issued the said certificate, indicates that percentage of permanent disability is 30%, the Tribunal erroneously held the percentage of disability as 10 %, expecting improvement in future.

3. The next limb of the argument of learned counsel for claimant is that the notional income of the claimant cannot be less than 6,000/- per month, as the claimant was able bodied mason, who had additional source of income as honey collector. He submits

that as appellant was 25 years old at the time of accident, the Learned Tribunal should have applied the multiplier of "18", instead of "17". He submits that the Tribunal did not consider compensation under the head of future prospectus and loss of future amenities. He placed reliance on "**Sayed Sadiq etc vs Divisional Manager, United India Ins. Co."** [**AIR 2014 SC (Civil) 840]** and **"The National Insurance Company Limited vs Pranay Sethi and Others" [(2017) 16 SCC 680].**

4. The learned counsel for respondent no. 2 Insurance Company submits that the learned Tribunal erroneously calculated the future loss of income in proportion with percentage of permanent disability certificate. He submits that person who treated the appellant is not examined and no X-ray was obtained before issuing permanent disability. He submits that compensation of Rs. 10,000/- is erroneously awarded under the head of Medical Expenses though no bill was proved by the appellant.

5. The next submission of learned counsel for respondent no. 2 is that the ratio of the Larger Bench of Apex Court in **"Pranay Sethi"** (supra) is not applicable in the injury claim petitions and it is applicable only in death claims petitions. Therefore, while determining the loss of future income "**Loss of Future Prospects**"

needs no consideration. His next objection is that the Learned Tribunal adopted the incorrect procedure for assessing the loss of future prospectus on the basis of percentage of disability. He placed reliance on “**Raj Kumar vs Ajay Kumar & Anr.” [2011 (1) ALL M.R. 402 (S.C.)]** wherein, the Two Judges Bench of the Supreme Court stated the principles for assessment of just compensation in injury claim petition as follows :

> i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
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> ii) The percentage of permanent disability with a reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (expect in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
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> iii) The doctor who treated the injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to

be assessed by the Tribunal with reference to the evidence in entirety.

iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age. Education and other factors.

6. In the same case, the Apex Court held that in the matters of injury claim, one third income need not be deducted from future loss of income towards personal expenses of the Claimant. The contention of the learned counsel for respondent no. 2 is that the quantum of the compensation assessed by the Tribunal is just and reasonable.

7. In the case at hand, to substantiate his claim, the claimant Ram Gaikwad (PW-1) stepped in the witness box and deposed that on account of rash and negligent driving by the driver of the offending vehicle on 21.1.2013, dash was given to the motorcycle by which, the Claimant was travelling as pillion rider. The Claimant sustained fracture injury to his right leg and was treated and operated at the Government Hospital, Aurangabad (GHATI) and a steel rod was inserted in his right leg which is not yet removed and for its removal, the future expenditure of Rs. 75,000/- are required.

According to this witness, he had spent about Rs. 1,50,000/- towards his medical treatment.

8. However, as rightly pointed out by learned counsel for respondent no. 2, no medical bills are proved by the Claimant to prove his actual expenditure on medical treatment. Doctor Bedmutha (PW 2) examined by the Claimant to prove the permanent disability certificate (Exh. 27), does not speak about medical expenditures incurred by the Claimant. However, this witness has proved permanent disability certificate (Exh. 27) indicating that the right leg bone of the Claimant was fractured at three places that is at right femur, right tibia and fibula. According to this witness, on account of 34% permanent disability the Claimant has right hip gross movement restriction and right ankle gross movement restriction. This witness opined that due to permanent disability the Claimant is not able to work as mason. This witness has also certified that for removing rods from the right leg of the Claimant, approximately Rs. 75,000/- will be required. He has proved certificate regarding future medical expenses (Exh. 28).

9. The evidence of Doctor Bedmutha (PW 2) is assailed by the learned counsel for respondent no. 2 on the ground that he is not Medical Officer who has treated the Claimant at Ghati Hospital,

however, in **Raj Kumar vs Ajay Kumar & Anr. (Supra),** the Apex Court held that the Doctor who examined the Claimant subsequently to assess the extent of his permanent disability, can give evidence only regarding the extent of permanent disability. The loss of earning capacity will have to be assessed with reference to the evidence in entire case. Therefore, doctor Bedmutha (PW 2), who examined the Claimant subsequently, can very well prove the percentage of permanent disability of the Claimant. However, the loss of future income does not depend upon percentage of permanent disability but it depends on the factors, how far the Claimant sustained loss of future earnings as a result of above referred permanent disability.

10. The heads under which compensation is to be awarded in personal injury cases are as under :

Pecuniary damages (Special Damages) :-

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earning (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages) :-

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

11. As observed above, the bills of medical treatment are not proved by the Claimant, therefore, he is not entitled to the compensation under the head of actual medical expenditure.

12. The Claimant claims that he was admitted in the hospital for treatment as Indoor Patient from 22.1.2013 to 19.3.2013 that is for about 58 days. The Claimant has not placed on record any documentary evidence regarding his actual income as Mason or honey collector, however, in the FIR (Exh. 31), lodged by the Claimant, it is specifically mentioned that the Claimant is labour and honey collector. Even as labour, having additional income of as honey collector, the notional income of the Claimant cannot be less than Rs. 6,000/- per month; as ruled by the Apex Court in **Sayed Sadiq etc vs Divisional Manager, United India Ins. Co. (Supra).**

The Claimant was bed ridden for treatment for about 58 days. Therefore, during this period he sustained actual loss of income at the rate of Rs. 200/- per day that is total Rs. 200/- x 58 = 11,600/-.Thus, Claimant is entitled to compensation of Rs. 11,600/- under the head of actual loss of earning during medical treatment.

13. From the evidence of Doctor Bedmutha (PW 2), it has become clear that on account of permanent disability, Claimant cannot work as mason. He has right hip gross movement restriction and right ankle gross movement restriction. Due to these restrictions of movements of right hip and right ankle certainly, the Claimant will not be able to do even heavy labour work on construction sites or in the agricultural field. Now, due to restriction of right leg movement, he will not be able to climb on trees for collection of honey. Therefore, on account of his permanent disability, at least 25% loss of earning is sustained by the Claimant. In the other words, Claimant has suffered 25% loss of his future earnings. Thus, considering the notional income of the Claimant as Rs. 6,000/- per month and loss of 25% per month his monthly loss of income after accident is assessed as Rs. 1500/-. After addition of 40% income as loss of future prospectus; as held by **The Larger Bench of the Apex Court in Pranay Sethi (Supra),** the monthly loss of income of the Claimant is (Rs. 1500 + 600) = Rs. 2100/-. Thus, the future monthly

loss of income of the Claimant is Rs. 2100/-. The annual loss of income is Rs. 2100 x 12 = 25,200/-. At the relevant time of the accident, the age of the Claimant was about 25 years. Therefore, in view of law laid down by the Apex Court in "**Smt. Sarla Varma vs Delhi Transport Corporation & Anr." [2009 (2) TAC 677]** multiplier of "18" will be applicable. Thus, total future loss of earning of the Claimant is Rs. 25,200 x 18 = 4,53,600/-. Thus, under the head of loss of future earning, the Claimant is entitled to compensation of Rs. 4,53,600/-.

14. As proved by Doctor Bedmutha for future medical treatment, the Claimant will have to spend Rs. 75,000/-. Thus, the Claimant is entitled to compensation of Rs. 75,000/- under the head of future medical expenses.

15. Due to permanent disability, for life long the Claimant will not be able to use his right leg in normal manner, therefore, on account of loss of amenities the Claimant is entitled compensation of Rs. 10,000/-. Under the head of damages for pains and suffering and trauma the Claimant is entitled compensation of Rs. 10,000/-. Under the head of attendance charges when he was hospitalized, he is entitled for compensation of Rs. 10,000/-. Thus, the Claimant is entitled to compensation under different heads as under :

Sr. No.	Particulars	Amount in Rupees.
1)	Loss of actual income during medical treatment	11,600/-
2)	Loss of future income	4,53,600/-
3)	Future Medical Treatment	75,000/-
4)	Pains and suffering and trauma	10,000/-
5)	Loss of amenities :	10,000/-
6)	Attendance Charges	10,000/-
	Total =	5,70,200/-

16. Respondent Nos. 1 and 2 are jointly and severally liable to pay this compensation amount inclusive of No Fault Liability with interest thereon at the rate of 9% per annum from the date of filling of this petition till realization. It follows that this appeal deserves to be allowed. Hence the following order :

ORDER

1) Appeal is allowed.

2) The Claimant is entitled to get total compensation of Rs. 5,70,200/- (Rs. Five Lac , Seventy Thousand and Two Hundred Only) inclusive of No Fault Liability, with interest thereon at the rate of 9% per annum from the date of filing of this petition till realization.

3) Respondent Nos. 1 and 2 are jointly and severally liable to pay this compensation amount to the Claimant.

4) Out of this compensation amount 50% amount be invested in Fix Deposit in any Nationalized Bank of the choice of the Claimant, for the period of next five years. Remaining amount shall be paid to the Claimant by Account Payee Cheques before the Tribunal.

5) Parties to bear their respective cost of the appeal.

6) The award passed by the MACT Tribunal, Aurangbad in MACP No. 340 of 2013, be modified accordingly.

(**Sunil K. Kotwal, J.**)

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