IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPAL NO. 505 OF 2009

Shrikant Nana Kapde,
Age; 22 years, Occupation; Nil,
Resident of Swami Vivekanand Colony,
Pailad, Amalner, District; Jalgaon. **APPELLANT**
(Original Claimant)

VERSUS

1. Yuvraj Narayan Sonwane,
Age; Major, Occupation; S.T.Driver,
Resident address MSRTC,
Yawal Depot, At Asavad,
Taluka Chopada, District; Jalgaon.

2. The Maharashtra State Road
Transport Corporation, Through
the Divisional Manager,
MSRTC, Jalgaon. **RESPONDENTS**
(Original Respondents)

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Shri. M.M. Bhokarikar, Advocate for Appellant
Shri. M.K. Goyanka, Advocate for Respondent No. 2
Respondent No. 1 served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 09.10.2018

Date of Pronouncing Judgment : 16.10.2018

J U D G M E N T :

This appeal is directed by the original claimant in Motor Accident Claims Petition No. 105 of 2005 (hereinafter referred to as

'MACP') against the judgment and award passed by the Motor Accident Claims Tribunal, Amalner (Hereinafter referred to as 'MACT') awarding compensation of Rs. 60,000/- for 15% permanent disability sustained by the claimant. Respondent No. 1 is the driver of the offending ST Bus (hereinafter referred to as 'offending vehicle') bearing No. MH-20-D-5525. Respondent No. 2 Maharashtra State Road Transport Corporation, Jalgaon (Hereinafter referred to as 'Corporation' for short) is the owner of the ST Bus.

2. The case in nut shell is that on 21.10.2004 at about 9.45 a.m., when the claimant was proceeding by Amalner - Chopda road with his hand cart loaded with drum/barrel of the water, that time the offending vehicle gave dash to the claimant, resulting into fracture injury to his leg. Despite medical treatment, the claimant sustained 15% permanent disability, therefore, this claim petition arose for compensation.

3. Heard Shri M.M. Bhokarikar, learned counsel for appellant and Shri M.K. Goyanka, learned counsel for respondent No. 2 Corporation.

4. Learned counsel for appellant submits that though appellant has proved 15% permanent disability due to accidental injury, the Tribunal awarded a lump sum compensation of Rs.

60,000/- without considering the expenditure for medical treatment and loss of future earnings of the claimant due to permanent disability. He has drawn my attention towards the evidence of two Medical Officers who treated the appellant.

5. His next submission is that the learned Tribunal did not consider different heads under which compensation is to be awarded. He prays for enhancement of the compensation.

6. Learned counsel for respondent No. 2 submits that the evidence of Medical Officers, who is examined by the claimant is vague and the claimant cannot prove that due to permanent disability sustained by him, his earning capacity is adversely affected in any manner. According to the learned counsel for respondent no. 2, after recovery from the accidental injuries, now the claimant cannot claim enhanced compensation under different heads. He submits that reasonable compensation is awarded by the Tribunal. In the alternate, he concedes that this Court may award reasonable compensation under different heads permissible under the law.

7. The Apex Court in **"Arvind Kumar Mishra vs New India Assurance Co. Ltd. & Anr" [(2010) 10 SCC 254]** observed that

> "7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand".

8. In **"Raj Kumar vs Ajay Kumar and another" [2011 (2) Mh. L.J. 569]**, the Apex Court has made the legal position very clear, regarding the manner in which the compensation can be awarded in injury claim under the Motor Vehicles Act, 1988, as well as the manner in which loss of earning capacity of the claimant has to be assessed. About different heads under which compensation is to be awarded the Apex Court specified following heads :

> "**The pecuniary damages (Special Damages)** :
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> (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (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)".

In the same case the Apex Court observed that

"In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant".

The Apex Court summarised the principles as under :

> “(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 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 (except 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 an 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.
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> (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”.

9. In **“Jagdish vs Mohan and Ors” [AIR 2018 Supreme Court 1347]**, three judges bench of the Apex Court directed that the principle laid down in **“Arvind Kumar Mishra”** (supra) and **“Raj Kumar”** (supra) must be followed by the Tribunals and High Courts in determining the quantum of compensation payable to the victims of the accident who are disabled either permanently or temporarily.

10. In the light of these authorities, if the judgment passed

by the Tribunal is considered, it emerges that the Tribunal has not tried to ascertain the exact loss of earning capacity of the claimant on the basis of evidence available on record. The Tribunal has not also considered different heads under which the compensation has to be awarded for sustaining permanent disability by the claimant. Therefore, I have to re-assess the entire evidence placed on record regarding the quantum of the compensation.

11. Apart from the oral evidence, the evidence of the claimant Shrikant Thakare (PW 1), Dr. Gautam Silvant (PW 2) and Dr. Krishna Saindane (PW 3) is available on record to ascertain the exact nature of the permanent disability sustained by the claimant. Dr. Shilwant (PW 2) deposed before the Tribunal that on 2.12.2015 he examined the claimant and noticed disabilities as "Post Traumatic restricted movement of right hip and knee joint with shortening of right leg". According to this witness, the claimant sustained 15% permanent disability. He has proved the disability certificate (Exh. 38). Despite searching cross-examination by the learned counsel for respondent No. 2, this witness remained firm that disability sustained by the claimant is permanent disability and it is not curable. In view of the evidence of Dr. Silvant (PW 2), who was one of the member of the Medical Board, General Hospital, Jalgaon, due to 15% permanent disability to the right leg of the claimant, he has restricted

movements to right hip and knee joint with shortening of the leg. Thus, it can be gathered that due to this permanent disability, the claimant cannot use his right leg in normal manner and due to shortening of the right leg and restricted movements of the right hip and knee joint, he would be limping for the entire life.

12. Dr. Saindane (PW 3) has only proved that the claimant was admitted in his hospital for the period of 21.10.2004 to 5.11.2004 for the fracture injury to his right leg and by operating him a steel rod was inserted in the right thigh. This witness has duly proved bills of medical treatment (Exh. 42). He has also made it clear that a steel rod inserted in the thigh of the claimant needs to be removed and for that purpose, expenditure of Rs. 7,500/- is required. The evidence of Dr. Saindane (PW 3) is relevant only for asserting the medical expenditure borne by the claimant and the future medical expenditure for the removal of the steel rod from the right thigh bone.

13. Thus, on the basis of evidence of Dr. Silvant (PW 2), the claimant has proved that the claimant has sustained 15% permanent disability due to accidental injury, due to which the claimant would not be able to use his right leg in proper manner for the entire life. According to the claimant, he used to work in his own hotel prior to the accident, however due to permanent disability he is not able to

work and sit in normal manner which affected his hotel business and he lost income of Rs. 7,000/- to 8,000/- per month.

14. No doubt, the claimant has not placed on record any documentary evidence to prove his monthly income at the rate of 7,000/- to 8,000/-. However, it cannot be ignored that due to incapacity of the claimant to sit and walk properly, definitely the functioning of his hotel business is adversely affected, resulting into the reduction of his monthly income. His movements are restricted to make purchasing for hotel and to give proper service to his customers.

15. In absence of any documentary evidence regarding monthly income of the claimant and considering nature of his source of earning, his notional income is assessed at the rate of Rs. 6,000/- per month. The injury certificate issued by Dr. Saindane (PW 3) and the Governmental Hospital papers (Exh. 47) show that at the relevant time of the accident the age of the claimant was 18 years. Therefore, in view of guidelines issued by the Larger Bench of the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70]**, 40% of income has to be added in the monthly income of the claimant which is assessed as Rs. 2,400/-, thus, the monthly income of the claimant is assessed as Rs. 6,000 + 2400 = 8,400/-. Considering the occupation of the claimant

and his inability to walk and sit properly due to permanent disability, I hold that the claimant has sustained at least 25% loss of his monthly income. Therefore, in every month he has sustained loss of Rs. 2,100/-. Thus, annual loss of claimant is assessed as Rs. 2100 x 12 = 25,200/-.

16. Considering the age of the claimant as '18' years at the time of accident, the multiplier of "18" will be applicable in view of the settled principle of law in **"Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr" [AIR 2009 Supreme Court 3104].** The annual loss of the claimant is assessed as Rs. 25,200/- and after applying multiplier of "18" the loss of future earnings of the claimant is assessed as Rs. 4,53,600/-. Therefore, under the head of loss of future income the claimant is entitled compensation of Rs. 4,53,600/-.

17. In accordance with the evidence of Dr. Saindane (PW 3), the claimant was admitted in his hospital from 21.10.2004 to 5.11.2004 i.e. for 16 days. Therefore, for the period of 16 days after his accident he was not able to earn his livelihood. The daily income of the claimant can be assessed as Rs. 200/- per day. Thus, during the period of hospitalization, the claimant sustained actual loss of income of Rs. 3,200/-. The claimant is entitled to compensation of Rs. 3,200/- under the head of loss of actual income during the

period of hospitalization.

18. As proved by Dr. Saindane (PW 3), the claimant has undergone surgery of his right leg for insertion of steel rod in his thigh. Therefore, I hold that under the head of pains and sufferings, the compensation of Rs. 25,000/- will be adequate. Considering 16 days period of hospitalization, under the head of nourishing food compensation of Rs. 7,000/- would be adequate.

19. As observed above, for the entire life the claimant would be unable to walk properly and he would be limping. Therefore, under the head of loss of amenities, compensation of Rs. 50,000/- needs to be awarded. Due to limping, even marriage prospects of the claimant would be adversely affected. Therefore, compensation of Rs. 25,000/- would be adequate under the head of loss of marriage prospects and loss of expectation of life.

20. Regarding medical expenditure, the bill issued by Dr. Saindane at (Exh. 42) shows that the claimant paid bill of Rs. 24,050/- during the period of hospitalization for surgery purpose and other expenditure. As determined by the Tribunal, the claimant has also spent amount of Rs.16,328/- and Rs. 3,724/- towards purchase of medicine. Thus, under the head of medical expenditure, the claimant is entitled to Rs. 44,102/- towards actual medical

expenditure.

21. As proved by Dr. Saindane (PW 3) for removal of steel rod from the right thigh of the claimant, he has to spent Rs. 7,000/- in future. Therefore, under the head of future medical expenditure, compensation of Rs. 10,000/- deserves to be awarded. Thus, the claimant is entitled to following total compensation under different heads:

Sr.No.	Particulars of Heads	Amount in Rupees.
1)	Actual loss of income during hospitalization.	3,200/-
2)	Future loss of income.	4,53,600/-
3)	Nourishing food.	Rs. 7,000/-
4)	Loss of future amenities.	Rs. 50,000/-
5)	loss of prospects of the marriage and loss of expectation of life	Rs. 25,000/-
6)	Actual medical expenses.	44,102/-
7)	Future medical expenditure.	10,000/-
8)	Pains, sufferings and trauma.	Rs. 25,000/-
	Total =	Rs.6,17,902 /-

22. The claimant is also entitled to interest on this compensation amount of Rs.6,17,902 /- (Rs. Six Lac Seventeen Thousand Nine Hundred and Two Only) at the rate of 9% per annum

from the date of filing of petition till realization of the compensation amount.

23. This compensation shall be inclusive of compensation received under No Fault Liability.

24. It follows that this appeal deserves to be allowed. Accordingly First Appeal No. 505 of 2009 is allowed. Award passed by MACT, Amalner in MACP No. 105 of 2005 is modified to enhance the compensation to the extent of Rs.6,17,902/- (Rs. Six Lac Seventeen Thousand Nine Hundred and Two Only) with interest thereon at the rate of 9% per annum from the date of filing of the petition till the realization of the compensation amount. This compensation shall be inclusive of No Fault Liability. Parties shall bear their respective costs of the appeal. Appeal is disposed of in above said terms. Deficit court fee, if any, be recovered from the claimant as per rules.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/