

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

FIRST APPEAL NO. 413 OF 2005

Sahebrao Irba Manjramkar
Age : 51 years, occu.: agri./service
R/o Dongaon (Bk), Tal. Biloli,
District Nanded.

Appellant.

Versus

1. Yeshwant Mohanrao Pawar
Age : major, occu.: agri./business
R/o Narsi, Taluka Biloli,
District Nanded.
2. National Insurance Co. Ltd.
Through Branch Office,
Nanded.
3. Bapurao Nagnath Bhagnare
Age : major, occu.: business
R/o Lecturer Colony,
Ahmedpur, District Latur.
4. Oriental Insurance Co. Ltd.,
Divisional Office at N. Complex
No.1, Second Floor, Keshav
Kunj, Hubali (Karnataka).

Respondents.

Mr. D.Y. Nandedkar, Advocate for the appellant.

Mr. R.C. Bora, Advocate holding for
Mr. P.P. Bafna, Advocate for respondent No.2.

Mr. V.N. Upadhye, Advocate for respondent No.4.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 19th November 2018.

Judgment pronounced on : 26th November 2018.

JUDGMENT.

1. This appeal is directed by the original claimant against the judgment and award passed by Motor Accident Claims Tribunal, Nanded (hereinafter referred to as "Tribunal") in Motor Accident Claim Petition No.353/1998, for enhancement of compensation.

2. Respondent No.1 is the owner and driver of jeep bearing registration No. MH-26-C-1306 and respondent No.2 is the insurer of that jeep. Respondent No.3 is the owner of offending truck bearing registration No. CTW-9855 and respondent No.4 is the insurer of that truck.

3. Hereinafter parties are referred to as per their status in the original claim petition.

4. The facts leading to institution of this appeal are that on 13.04.1997 the claimant was travelling by offending jeep which was proceeding towards village Narsi. Near Lohgaon Phata, the

offending truck came from opposite direction in high speed and due to rash and negligent driving by the driver of the said truck, it gave dash to the jeep involved in the accident. According to the claimant, the accident occurred due to rash and negligent driving of the driver of both vehicles. In that accident, the claimant sustained compound fracture of ankle joint and hip joint. Even his right leg bone and right hand bone were fractured. The claimant was treated in the hospital of Dr. Patni at Nanded. He sustained 35% permanent disability due to which his earning capacity was affected to the tune of 75 %. The claimant cannot walk without support of the stick and is unable to drive the motorcycle. In the result, claimant filed claim petition before the Tribunal at Nanded.

5. After considering the evidence placed on record, the Tribunal awarded compensation of Rs. 84,000/- with interest at the rate of Rs. 9 % per annum from the date of filing of petition till realization of entire compensation amount. 25% liability was saddled on respondent Nos.1 and 2 and 75% liability was saddled on respondent Nos.3 and 4. Being dis-satisfied with the quantum of compensation, the claimant has preferred this appeal.

6. Heard Mr. D.Y. Nandedkar, learned Counsel for the appellant, Mr. R.C. Bora, learned Counsel for respondent No.2 and Mr. V.N. Upadhye, learned Counsel for respondent No.4.

7. Learned Counsel for the appellant submits that though the claimant sustained 35% permanent disability and though he cannot walk without support of the stick, meager compensation of Rs. 84,000/- is awarded by the Tribunal. His next submission is that, no compensation is awarded for loss of future income, transport expenses, loss of future earning and loss of agricultural income. He submits that the compensation shall be awarded under different heads. He placed reliance on the cases of **“B. Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd.”** (2011 ALL SCR 1263), **“ K. Suresh VS. New India Assurance Co. Ltd.”** (2012 ACJ 2694) and **“Sanjay Kumar Vs. Ashok Kumar and another”** (2014 AIR SCW 1236).

8. Learned Counsel for respondent No.2 Insurance Company submits that neither Medical Officer, who issued permanent disability certificate is examined by the claimant, nor

any evidence has been placed on record to prove loss of earning capacity. He submits that from the cross-examination of claimant, it reveals that he is in Government service and even after the accident, he continued his service. Therefore, there is no loss of future earning. He has pointed out that no salary certificate is filed by claimant to prove his monthly income as salary. No 7/12 extract is filed to prove that the claimant is owner of any agricultural land. Therefore, no compensation can be awarded under the head of loss of agricultural income.

9. Learned Counsel for respondent No.4 – Insurance Company pointed out that no evidence has been placed on record to prove the income of claimant. In absence of medical evidence on record, claimant cannot prove that he sustained loss of earning capacity. Both the learned Counsels for Insurance Companies pray for dismissal of the appeal.

10. I have carefully gone through the judgment in the case of **“B. Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd.”** (supra), wherein the Apex Court ruled that the compensation can be awarded for permanent disability as

well as under the head of loss of earning capacity. In the case of **“K. Suresh Vs. New India Assurance Co. Ltd.”** (supra) the Apex Court reiterated the law settled by various Authorities including **“Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. (2010 ACJ 2867 SC)** and **“Raj Kumar Vs. Ajay Kumar” (2011 ACJ 1 SC)**. It is ruled that, pecuniary damages and non-pecuniary damages can be awarded in injury claim petitions as follows :-

“Pecuniary damages (Special Damages) :

- (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)".

11. However, there shall be medical evidence to prove the loss of earning capacity of the claimant after considering his occupation. In the light of the above-mentioned principles of law, if the evidence placed on record by claimant is considered, it emerges that except oral evidence of the claimant Sahebrao (PW-1), no other witness is examined by the claimant to prove permanent disability certificate (Exh.65 and Exh.66). The claimant claims that for medical treatment he was hospitalized in the hospital of Dr. Patni from 13.04.1997 to 12.05.1997. However, to prove this contention, he has not examined Dr. Patni. Even the claimant has not filed discharge card issued by Dr. Patni to prove the period of his hospitalization. Only in the disability certificate (Exh.66), it is mentioned that the claimant was admitted on 13.04.1997 and discharged on 12.05.1997. Therefore, it can be gathered that the claimant was hospitalized for the period of 31 days.

12. However, from the examination-in-chief of claimant Sahebrao (PW-1), it emerges that he was in Government service

as Assistant Agricultural Officer. According to the claimant, he used to draw salary of Rs. 4,000/- per month and due to accidental injuries he did not attend his duty for the period of six months and thereby he sustained loss of Rs.25,000/-. However, neither the claimant has placed on record his salary certificate to prove his monthly salary at the rate of Rs. 4,000/-, nor he has filed any order issued by his superior officer to show that he was on leave for the period of six months and for that period salary was not paid to him. Therefore, claimant cannot prove that he sustained damages of Rs.25,000/- on account of loss of income during his hospitalization period.

13. Though the claimant claims that due to accidental injuries he lost his earning capacity, from his cross examination it emerges that his Department did not give him any memo contending that his efficiency to work was reduced due to his permanent disability. Undisputedly, after the accident the claimant continued his service as Agricultural Assistant. Even it is not the case of claimant that his service was terminated by his Department on account of his permanent disability. Therefore, in absence of evidence of any medical officer or evidence of any

employee from his Department, the claimant cannot prove that due to permanent disability he sustained loss of earning capacity. Therefore, no compensation can be awarded to the claimant under the head of loss of future earning.

14. No receipt issued by Dr. Patni Hospital is proved by claimant to prove the payment of hospital charges. Only cash memo of Rs. 9,100/- regarding Paras Orthopedic Nursing Home is placed on record at Exh.63. In addition to this, claimant has filed copies of cash memos of medicines worth Rs. 4,846/-. Therefore, under the head of medical expenses, claimant is entitled to compensation of Rs.13,946/- (9100 + 4846).

15. As the claimant was hospitalized for the period of 31 days, somebody must have attended him during the period of hospitalization. In absence of any documentary evidence regarding expenditure of attendance, by guess-work I hold that the claimant is entitled to attendance charges at the rate of Rs.500/- per day. Therefore, he is entitled to compensation of Rs.15,500/- under the head of attendance charges.

16. The disability certificate (Exh.65) shows that second and third metacarpal bone of the right leg of claimant was fractured and in addition to this right patella of the claimant was fractured. The disability certificate (Exh.66) issued by Dr. Patni cannot be read due to illegible handwriting of Dr. Patni. Therefore, considering the fracture injuries sustained by the claimant, under the head of pain, suffering and trauma the claimant is entitled to compensation of Rs. 50,000/-.

17. Though the claimant claims that due to permanent disability he was not able to walk, from his cross-examination it emerges that on the date of recording his evidence he attended the Court without taking support of the stick. This admission shows that all the injuries sustained by claimant are cured and he is able to walk after recovery. Therefore, no compensation can be awarded under the head of loss of amenities and future prospects of life.

18. As the claimant was shifted to the Orthopedic Hospital of Dr. Patni from the Rural Hospital, Naigaon, some compensation is to be awarded under the head of transportation

charges. Therefore, considering the distance in between Naigaon and Nanded, reasonable compensation of Rs. 4,000/- deserves to be awarded under the head of transportation charges. Thus, the claimant is entitled to following compensation under different heads:-

- | | | |
|----|----------------------------|--------------------------------|
| 1. | Medical expenses | :- Rs. 13,946/- |
| 2. | Attendant charges | :- Rs. 15,500/- |
| 3. | Pain, suffering and trauma | :- Rs. 50,000/- |
| 4. | Transportation charges:- | <u>Rs. 4,000/-</u> |
| | Total :- | Rs. 83,446/- |
| | | (in round figure, Rs.84,000/-) |

19. In view of the above discussion, as the claimant is entitled to compensation of Rs. 84,000/- (Rupees Eighty Four Thousand) with interest thereon at the rate of Rs.9% per annum, prayer of the claimant to enhance the compensation, cannot be granted.

20. Though the learned Counsel for respondent No.2 submits that by carrying the passengers in the offending jeep, the owner of the jeep has committed breach of condition of insurance policy, this argument cannot be considered in absence

of cross-objection or appeal against the judgment and award passed by the Tribunal.

21. In the circumstances, I hold that this appeal deserves to be dismissed.

22. Accordingly, First Appeal No. 413 of 2005 is dismissed. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/