

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

FIRST APPEAL NO. 100 OF 2007

Shri Anand s/o Babagir,
age 37 years, occ. Driver,
R/o Sawarkheda, Tq. Hingoli,
District Hingoli

...Appellant

VERSUS

1] Maharashtra State Road
Transport Corporation,
M.S.R.T.C. Through
its Divisional Controller,
Parbhani,

2] Musakhan s/o Norkhan Pathan,
age 40 years, occ. Driver,
Batch No. 9269, S.T.D Depot,
Ambajogai, Tq. Ambajogai,

3] Vinod Pralhadrao Nayak,
age 35 years, occ. Agril.,
R/o Hingoli, Tq. Hingoli,
District Hingoli,

4] United India Insurance
Company, through its
Branch Manager, Parbhani

...Respondents

...

Mr. B.S.Kudale, advocate for Appellant

Mr. A.D.Wange, advocate for resp.nos. 1 and 2

Mr. S.G.Chapalgaonkar, advocate for Resp. no. 4

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 03.12.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 10.12.2018

J U D G M E N T :

This appeal is directed by original claimant in Motor Accident Claim Petition No. 50 of 2000 (old 21 of 1997), against the judgment and award, passed by the Motor Accident Claims Tribunal, Hingoli, awarding compensation of Rs.45,000/- including no fault liability compensation, with interest at the rate of nine per cent per annum, from the date of filing of petition.

2. Respondents are original respondent nos. 1 to 4, respectively.

3. The parties hereinafter are referred as per their status in the original proceedings.

4. Facts, leading to institution of this appeal, in brief, are that : -

On 11.9.1996 at about 2.00 p.m. when the claimant was driving Jeep No. MH-22-8146, on Hingoli to Aundh road, the offending S.T. bus No.

MH-20/B-2561 came from opposite direction in high speed and gave dash to the Jeep, only due to rash and negligent driving by respondent no.2 driver of the S.T. bus. In that accident, claimant sustained injuries to his right leg and head, resulting into partial permanent disablement. Therefore, the claimant filed claim petition before the Tribunal for compensation of Rs.Two Lakh.

5. Respondent nos. 1 and 2 filed written statement (Exhs. 15 and 12) and contended that the accident occurred due to rash and negligent driving of the Jeep by claimant himself. They have denied their liability to pay compensation. Even, respondent no.4 denied its liability by filing written statement, contending that the accident occurred only due to rash and negligent driving by the driver of the ST bus.

6. After considering the evidence placed on record by claimant, the Tribunal exonerated respondent nos. 3 and 4 and saddled joint and several liability to pay the compensation on

respondent nos. 1 and 2 only. Against that award, respondent nos. 1 and 2 have not filed any appeal or even cross-objection. Only the claimant has filed this appeal for enhancement of compensation. Therefore, in this appeal, my discussion is restricted only to fair, just and reasonable quantum of compensation payable to the claimant.

7. Heard Shri B.S.Kudale, learned counsel for the appellant, Shri A.D.Wange, learned counsel for respondent nos. 1 and 2 and Shri S.G.Chapalgaonkar, learned counsel for respondent no.4.

8. Learned counsel for the claimant submits that in the above said motor vehicular accident, the claimant sustained 20 per cent permanent and partial disablement to his right leg and thigh. Therefore, he is not able to drive the Jeep and thereby lost 100 per cent earning capacity. He has drawn my attention to the disability certificates 35 and 36.

Next contention of learned counsel for the appellant is that at the time of accident the

claimant was 32 years old young person. However, the Tribunal did not consider the loss of future prospects while awarding the compensation.

His next submission is that meager compensation is awarded by the Tribunal, and therefore, the compensation shall be enhanced substantially. He placed reliance on "**National Insurance Company Ltd. Vs Pranay Sethi and others**" [2018 (3) Mh.L.J. 70] and "**Rajkumar vs Ajaykumar and another**" [2011 (2) Mh.L.J. 569].

9. Learned counsel for respondent nos. 1 and 2 submits that no documentary evidence has been placed on record by claimant to prove his monthly income at the rate of Rs.2,000/- as a driver.

His next contention is that even no documentary evidence is placed on record regarding medical expenditure by the claimant. Therefore, the Tribunal, after considering over all circumstances of the case rightly awarded reasonable compensation to the claimant.

10. In the case at hand, undisputedly the occupation of the claimant was driver of the Jeep. The claimant being driver, even in the year 1996, notional income of the claimant cannot be less than Rs.2,000/- per month as claimed by the claimant.

11. Regarding age of the claimant, though he has not filed his birth certificate, the disability certificates Exhs. 35 and 36 issued in the year 1998, show the age of the claimant as 34 years. Therefore, on the date of accident i.e. in the year 1996, the claimant would be 32 years old, as claimed by him. Thus, in view of law settled by **"Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr."** [2009 (5) Mh.L.J. 775], in the case at hand, multiplier of 16 is applicable, while determining the loss of income of the claimant due to permanent disability.

12. In the land mark judgment in the case of personal injury cases in **Rajkumar vs Ajaykumar and another** (supra), the Apex Court has made it clear

that the heads under which compensation is awarded in personal injury cases are 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).

In this case, the Apex Court also has made it clear that the quantum of compensation cannot be determined only on the basis of percentage of permanent disability sustained by the claimant, but it depends on loss of earning capacity of the claimant due to permanent disability. The Apex Court has summarised the principles as follows : -

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(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).

(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.

(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.

13. In the case of **Rajkumar vs Ajaykumar and another** (supra), the Apex Court has also made it clear that in routine personal injury cases, the compensation will be awarded only under heads – expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, miscellaneous expenditure, loss of earning during period of treatment and damages for pain, suffering

and trauma, as a consequence of injury. However, compensation under the heads – loss of future earning on account of permanent disability, future expenses, loss of amenities or loss of prospects of marriage and loss of expectation of life can be awarded only when there is specific medical evidence corroborating the evidence of claimant.

14. In the case at hand, except by filing permanent disability certificates (Exhs. 35 and 36), the claimant has not even taken pains to examine the Medical Officer, who issued these certificates. As the Respondents did not object the admissibility of these certificates, those were admitted in evidence and exhibited by the Tribunal. However, medical opinion regarding the inability of claimant to continue his occupation as driver, due to injury to his leg, is missing. Only because in the injury certificate (Exh.36), it is mentioned that there is stiffness of right knee and wasting of right thigh muscles, in absence of evidence of Medical Officer on record, conclusion cannot be drawn that the claimant is unable to drive the jeep

due to stiffness in knee and wasting of thigh muscles. Otherwise also, medical certificate (Exh.36) being not in proper Format 'B' as mandatory under the Motor Vehicles Act, it cannot be considered as authentic evidence. The certificate (Exh.35), which is in proper format only speaks regarding fracture of right patella and stiffness as well as wasting of right thigh muscles. This certificate does not indicate that due to fracture of patella and wasting of thigh muscles, the claimant cannot move his right leg in normal manner, and therefore, he cannot drive the four wheeler.

15. Therefore, in absence of proper corroborating medical evidence, oral version of claimant Anand Gir (PW 1) regarding his inability to work as driver, is not acceptable. Therefore, as ruled by the Apex Court in **Rajkumar vs Ajaykumar and another** (supra), compensation cannot be granted to the claimant under the head of loss of future earning on account of permanent disability, as well as under the head of future medical expenses. So

also, compensation cannot be granted under the head of loss of amenities and loss of expectation of life.

16. While considering the compensation payable to the claimant under other heads, I must consider that though notional income of the claimant is Rs.6000/- per month, under the head of loss of future prospects, 40 per cent amount should be added in the monthly salary of the claimant, because the claimant is 32 years old at the time of accident in view of judgment in "**National Insurance Company Ltd. Vs Pranay Sethi and others**" (supra). Thus, monthly income of the claimant is assessed as Rs.6000+2400=8400/-.

The discharge card (Exh.33) shows that the claimant was admitted in the Government Hospital, Nanded on 11.9.1996 and he was discharged on 7.10.1996. Thus, this discharge card corroborates the contention of Anand Gir (PW 1) that he was admitted in the hospital for 27 days. According to this witness, his right leg was in plaster for the period of two months and his family members stayed

with him in the hospital during that treatment. Therefore, it can be held that the claimant was unable to earn his livelihood by driving jeep for the period of two month. Considering the monthly income of the claimant as Rs.8400/-, he is entitled to compensation of $\text{Rs.8400} \times 2 = 16800/-$ under the head fo loss of income during the period of hospitalization and treatment.

As the claimant was attended by his relative in the hospital for 27 days, considering the expenditure of attendant in the hospital, I hold that compensation is to be awarded to the claimant under the head of attendant charges at the rate of Rs.500/- per day. Thus, for the period of 27 days, the claimant is entitled to compensation of $\text{Rs.500} \times 27 = 13500/-$ towards attendant charges.

Though the claimant has not filed bills of medicines to prove the medical expenditure, the Tribunal awarded reasonable compensation of Rs.10,000/- towards medical expenditure. In view of fracture injury sustained and surgery undergone by the claimant as mentioned in the discharge card, I do not find any reason to interfere with that

finding.

As the claimant was hospitalised for 27 days and his leg was kept in plaster for two months, compensation needs to be awarded under the head of nourishing food. I hold that compensation of Rs.20,000/- is reasonable under the head of nourishing food.

The claimant met with the accident on Hingoli to Aundh road near Kayadhu river bridge and from there initially he was shifted to Rural Hospital, Hingoli and at last to Government Medical College Hospital, Nanded. Considering these facts on record, the claimant is also entitled to reasonable transportation charges of Rs.10,000/-.

From the discharge card and disability certificate, it has come on record that due to fracture of right leg bone the claimant has undergone surgery. Thus, under the head of pain, suffering and trauma the claimant is entitled to compensation of Rs.50,000/-.

Thus, the claimant is entitled to following compensation under different heads.

Loss of income during hospitalization and treatment	: Rs. 16800/-
Medicine	: Rs. 10000/-
Transportation charges	: Rs. 10000/-
Attendant charges	: Rs. 13000/-
Nourishing food	: Rs. 20000/-
Pain, suffering and trauma	: Rs. 50000/-
Total	: Rs.119800/-

17. Before parting with the judgment, I must make it clear that though learned counsel for the claimant placed reliance on **Jakir Hussain vs Sabir and others [2016(1) Mh.L.J.151]**, **Ram Gopal Yadav v Paramjeet Kaur and anr. [2014 (1) ALL MR 976 (SC)]**, **Basappa s/o Sangnabasappa Bahvikatti vs T. Ramesh s/o Tangavelu and another [(2014) 10 SCC 789]**, **Grifan vs Sarbjeet Singh [2000 (9) SCC 338]** and **Neeta w/o Kallappa Kadolkar and others vs Divisional Manager, MSRTC, Kolhapur [(2015) 3 SCC 590]**, the ratio of these authorities is of no help to claim more compensation to the claimant, due to

distinguishing fact of non-examination of Medical Officer. Accordingly, my conclusion is that First Appeal No. 100 of 2007 deserves to be partly allowed. Accordingly, I pass following order.

“(i) First Appeal No. 100 of 2007 is partly allowed.

(ii) The award passed by the Motor Accident Claims Tribunal, Hingoli in Motor Accident Claim Petition No. 50 of 2000 (Old 21 of 1997) is modified to enhance the compensation to the tune of Rs.119800/- with interest thereon at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation.

(iii) This compensation shall be inclusive of compensation received under no fault liability.

(iv) Award be modified accordingly.”

18. Deficit court fee, if any, shall be recovered from the claimant.

19. Parties to bear their respective costs of appeal.

20. Appeal is disposed of in above said terms.

[SUNIL K.KOTWAL, J.]

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