

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**BENCH AT AURANGABAD****FIRST APPEAL NO. 1430 OF 2015**

Suryabhan Digambar Kagne,
Age; 45 years, Occupation; Police,
Resident of Basmath Phata Nanded.

APPELLANT
(Original Claimant)

VERSUS

- 1) New India Assurance Co. Ltd.,
Divisional Manager, Jalna Road,
Beed, Through its authorized signatory,
Mr. Hiralal s/o Namdeo Vispute,
Age; 52 years, Occupation; Service,
Assistant Manager,
New India Assurance Co.Ltd.,
Resident; Aurangabad.

- 2) Vaijnath Laxmanrao Phad,
Age; Major, Occupation Business,
Resident of Maruti Sadan, Prashant
Nagar Ambejogai, Tq. Ambejogai,
District; Beed.

RESPONDENTS
(Original Respondents)

...
Shri. A.D. Hande, Advocate for Appellant
Shri M.M. Ambhore, Advocate for respondent No. 1
Respondent No. 2 is served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 29.9.2018.

Date of Pronouncing Judgment : 3/10/2018

J U D G M E N T :

This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal, Nanded in MACP No. 635 of 2005 which awarded total compensation of Rs. 11,77,061/- with interest thereon at the rate of 7.5%. Appellant is the original claimant in above said injury claim petition. Respondent No. 1 is owner of the offending vehicle and respondent No. 2 is the insurer.

2. Facts leading to institution of this appeal are that on 30/7/2005 the claimant who was in State service as Police Constable, was proceeding towards Bhokar Phata by his motorcycle No. MH-26-J-5365, at about 8.40 p.m. On Ardhapur – Nanded road the offending truck bearing registration No. MH-44-6127 came from the back side and the truck gave dash to the motorcycle of the claimant from its back side. In that accident, both leg bones of the claimant were crushed, which resulted into amputation of his both legs above the knee joint. Therefore, claim under Section 166 of Motor Vehicle Act, 1988 (hereinafter referred as “MV Act”) was filed against the respondents.

3. Heard Shri A.D. Hande, learned counsel for appellant and Shri A.N. Ambhore, learned counsel for respondent no. 1 Insurance Company. Learned counsel for the appellant submits that while assessing the compensation the learned Tribunal considered

the monthly income of the claimant as Rs. 4,697/- though the total salary of the claimant is Rs. 7,311/- per month. He submits that considering the amputation of both legs of the claimant, more compensation should have been awarded for the loss of future income, considering the factor that due to permanent disability, the future prospect of the appellant/claimant is totally ruined.

4. His next submission is that though due to amputation of both legs 100% functional disability has been resulted. The learned Tribunal did not award compensation under the head of loss of amenities as well as loss of expectation of life. He has also pointed out that under the head of attendance charges meager compensation is awarded. He submits that even interest is not awarded at the rate of 9% per annum which is appropriate in such cases.

5. Learned counsel for respondent no. 1 submits that due to amputation of leg, the petitioner has not lost his service, but only table work is given to him in the same scale which was at the time of accident. He submits that the Tribunal rightly considered deductions from the salary of claimant while assessing the monthly pay. However, he fairly concedes that reasonable compensation be awarded for the loss of amenities and future expectation of life.

6. In the case at hand, after going through the judgment passed by the Tribunal, it emerges that the Tribunal considered the loss of income in proportion with percentage of permanent disability. However, law regarding assessment of compensation in the injury claims under the Motor Vehicles Act, is settled by the Apex Court long back in the case “**Rajkumar vs Ajaykumar and another**” [2011 (2) Mh.L.J. 569]. In this case, the Apex Court held that

“while assessing the assessment of future loss of earning due to permanent disability, the loss of earning capacity due to permanent disability would not be in proportion to the percentage of permanent disability. The Tribunal has to assess the percentage of loss of earning capacity as a result of permanent disability on the basis of evidence on record. The Tribunal has to determine whether such permanent disability is affected or will affect the earning capacity of the claimant”.

In that case as well as in “**Sandeep Khanuja vs Atul Dande and Another.**” [(2017) 3 SCC 351], the Apex Court held that

“multiplier methods should be adopted while assessing compensation and after considering the profession of claimant, the loss of earning capacity can be determined”.

7. In the case at hand, at the time of accident, the claimant was in State service as Police Constable. His School Transfer Certificate (Exh. 44) shows that the date of birth of claimant is 12.9.1967 and therefore, at the time of accident he was 38 years old. From the evidence of doctor (PW 3), who operated the claimant, it reveals that both legs of the claimant were amputated from mid thigh region and therefore, claimant cannot move from one place to another without help of the attendant. From his cross-examination, it emerges that except amputation which resulted into 100% functional disability, other condition of claimant was normal and he can do sedentary job.

8. From the cross-examination, claimant Suryabhan (PW 1), it emerges that even after the accident he was assigned desk job as clerk in the same scale and there is no loss of income of the claimant. Therefore, no compensation can be awarded for the loss of actual earning. However, at the same time, it cannot be ignored that before the accident, the claimant was performing duty of Police Constable in the field and due to permanent disability, now he has to accept the desk job. Thus, certainly, the petitioner has sustained loss of future prospectus in the police service. Now, he cannot be promoted as Police Sub Inspector or on other higher posts, in the field of police service. Therefore, certainly, compensation is to be awarded for the loss of future prospectus. In

“National Insurance Company Ltd. vs Pranay Sethi and others”

[2018 (3) Mh.L.J. 70], while assessing the income of a person in permanent job of the age below 40 years 50% amount is to be added in the actual salary. The pay slip of the claimant (Exh. 47) shows that his total monthly salary is Rs. 7,311/- and only taxes of Rs. 175/- are deducted in every month. Thus, actual salary of the claimant is Rs. $7,311 - 175 = \text{Rs. } 7,136/-$ per month. Considering the age of the claimant as 38 years at the time of accident, multiplier of “15” will be applicable. Thus, annual income of the deceased is Rs. $7,136 \times 12 = \text{Rs. } 85,632/-$. The annual loss of future prospectus is to be assessed as Rs. $85,632/2 = 42816/-$ as 50% of annual income. If the multiplier of “15” is applied, the loss of future prospectus is assessed as Rs. $42,816 \times 15 = \text{Rs. } 6,42,240/-$.

9. In addition to this, the Government Resolution dated 7.6.2006 (Exh. 48) shows that towards medical expenses Rs. 1,31,426/- were reimbursed, however, this amount is to be recovered from the claimant after grant of compensation by Tribunal. Therefore, under the head of medical expenses compensation of Rs. 1,31,426/- is to be awarded.

10. In addition to this, compensation is to be awarded for transportation charges and nourishing food. Though no actual bills of

transportation are not filed by the claimant by guess work amount of Rs. 10,000/- is awarded under the head of transportation charges. Due to amputation of both legs for the entire life the petitioner would require nourishing food to maintain his health. Therefore, under the head of expenses of nourishing food, compensation of Rs. 1,00,000/- is awarded.

11. As both bone legs of the claimant were crushed in the accident, one can imagine under what pains, suffering and trauma the petitioner had passed. Therefore, Rs. 1,50,000/- is awarded under the head of pains, suffering and trauma.

12. As both legs of the petitioner are amputated, for his entire life he has to take assistance of one attendant. By examining attendant Shri Anandrao Dongre (PW 2), the petitioner has also proved that from October, 2005 till October, 2006, the claimant paid Rs. 2,000/- per month and thereafter, he has to pay Rs. 3,000/- per month as salary to the attendant. Till October, 2006 the claimant has paid Rs. 24,000/- and thereafter he is paying Rs. 36,000/- per annum till today to the attendant and in his entire life he has to pay same attendance charges. Therefore, under the head of attendance charges compensation of Rs. $36,000 \times 15 = 5,40,000/-$ is to be awarded to the claimant.

13. In addition to this, the claimant is also entitled to compensation of Rs. 2,00,000/- for the loss of amenities because in his entire life he would never be able to walk without support. The claimant is also entitled to compensation of Rs. 1,00,000/- under the head of loss of expectation of life. Thus, the Claimant is entitled to the following compensation under different heads :

a)	Loss of future prospectus	Rs. 6,42,240/-
b)	Medical expenses	Rs. 1,31,426/-
c)	Transportation	Rs. 10,000/-
d)	Nourishing Food	Rs.1,00,000/-
e)	Pain, Sufferings & Trauma	Rs.1,50,000/-
f)	Attendance charges	Rs.5,40,000/-
g)	Loss of amenities	Rs.2,00,000/-
h)	Loss of expectation of life	Rs.1,00,000/-

	Total	Rs.18,73,666/- (Rs.
		Eighteen Lacs, Seventy Three
		Thousand, Six Hundred and
		Sixty Six Only).

14. The claimant is also entitled to interest on this

compensation amount at the rate of 9% per annum from the date of filing of petition till its realization. This compensation shall be inclusive of compensation received under No Fault Liability.

15. I hold that the appeal deserves to be allowed. Accordingly, appeal is allowed in above said terms. Parties to bear their respective costs. Deficit court fees if any, be recovered from the claimant. Appellant/claimant is also permitted to withdraw the compensation amount which is already deposited in this Court or before the Tribunal, after the period of appeal is over. Award passed by the Tribunal be modified accordingly.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/