IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4559 OF 2017

Mohammad Rais Khan
S/o Sadullah Khan,
age 26 years, occ. Cleaner,
At present Nil,
R/o Gulshan Colony,
Degloor Naka, Nanded,
District Nanded ...Appellant
[Orig. Claimant]

VERSUS

1] Shaikh Jilani s/o Shaikh
Ahmed, Age 62 years,
Occ. Business (vehicle owner),
R/o Rahemat Nagar,
Near Degloor Naka, Nanded,
District Nanded,

2] The Oriental Insurance
Company, through its
Divisional Manager,
Branch office at
Sant Kripa Market, G.P.Road,
Nanded, Tq. & Dist. Nanded ...Respondents

...

Mr. H.I.Pathan, advocate for appellant
Mr. A.G.Kanade, advocate for respondent no.2
Respondent no.1 served

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING
THE JUDGMENT : 04.10.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 11.10.2018

J U D G M E N T :

This appeal is directed by original claimant in Motor Accident Claim Petition No. 339 of 2011, against the judgment and award, passed by the Motor Accident Claims Tribunal, Nanded, awarding total compensation of Rs.4,87,657/- with interest at the rate of 9 per cent per annum, from the date of petition, till its realization. This appeal is only for enhancement of the compensation. No Cross-objection or Cross-Appeal is filed by respondent no.1 registered owner or by respondent no.2 insurer of offending truck No.MH-19/Z-0792.

2. Heard Shri H.I.Pathan, learned counsel for the appellant and Shri A.G.Kanade, learned counsel for respondent no.2 insurance company.

3. Learned counsel for appellant submits that both legs of the claimant were amputated on account on injury sustained in the above motor vehicle accident. Therefore, on account of 100 per cent functional disability, the appellant has lost

100 per cent earning capacity.

His next submission is that monthly salary of appellant is Rs.4,500/- and Rs.50/- per day are paid as Bhatta to the claimant. Thus, monthly salary of the claimant is Rs.6,000/-. He submits that the Tribunal erroneously discarded the evidence of employer Sk. Jilani (PW 2), who has proved monthly salary of the claimant.

Next limb of argument of the learned counsel for the appellant is that as the Medical Officer was compelled to appear and depose before the Court by the claimant, intentionally he gave admission before the Court that with the help of artificial limbs the appellant can climb in truck and do his routine work.

He points out that no compensation is awarded under the head of loss of amenities and loss of future expectation of life. Even loss of future prospects is not considered though the claimant was about 20 years of age at the time of accident.

4. Learned counsel for respondent no.2 submits that the Tribunal did not consider contributory negligence on the part of the claimant. He submits that employer Sk. Jilani (PW 2) is relative of the claimant, therefore, his testimony cannot be believed.

Next limb of the argument of the learned counsel for respondent no.2 is that compensation for purchasing artificial limb is already awarded by the Tribunal, as Dr. Sachin Umrekar (PW 3) has admitted in his cross-examination that the claimant can work with artificial limb in normal manner. He submits that adequate compensation is already awarded, and therefore, appeal deserves to be dismissed.

5. At the out set, I must observe that in absence of Cross-objection of Cross-Appeal, learned counsel for insurance company cannot re-agitate the defence of contributory negligence on the part of the claimant. Thus, the first objection raised by the learned counsel for respondent no.2 is rejected.

6. Another important aspect is that in support of his contention, the claimant has examined Sk.Jinali Sk.Ahmad (PW 2), employer of claimant. Sk. Jilani (PW 2) deposed that he used to pay Rs.4,500/- per month as salary and Rs.50/- per day as daily allowance to the claimant. The Tribunal disbelieved this evidence on the ground that the employer has not maintained record regarding payment to the claimant.

7. This Court has taken consistent view in the case of **Royal Sundaram Alliance Insurance Company Limited vs Smt. Varsha Rajendra Pache and others [2017 (6) Mh.L.J. 308]** and in **Sushila Wd/o Subhash Mendhe and another vs National Insurance Company Limited and Others [2018 (3) Mh.L.J. 311],** that when by examining the employer of the claimant his monthly salary is proved, the Tribunal cannot reject that evidence because it is not supported by other record. Therefore, evidence of Sk. Jinali (PW 2) cannot be discarded only because he has admitted in his cross-examination that he did not

obtain any receipt from the claimant and there is no written agreement in between him and claimant about his service conditions. On the other hand, Sk.Jinali (PW 2) has duly proved his certificate Exh.50 to show the payment of salary and Bhatta of Rs. 6,000/- per month to the claimant since before two years till the date of occurrence of accident. No other reason is made out by respondent no.2 to disbelieve the truthful version of Sk.Jilani (PW 2). Though, learned counsel for respondent no.2 submits that the claimant has admitted that Sk. Jilani (PW 2) is his relative, after going through cross-examination of claimant, it reveals that the suggestion given to the claimant that Sk.Jilani (PW 2) is his relative has been specifically denied by the claimant. Therefore, otherwise also, testimony of Sk.Jilani (PW 2) cannot be disbelieved on the ground that he is relative of the claimant. Accordingly, I hold that agricultural income of the claimant is Rs.6,000/- per month.

8. Though, age of the claimant is disputed in between parties, the disability certificate issued by Handicapped Board, Government Medical College, Nanded (Exh.41) clearly shows that at the time of occurrence of the accident, the age of the claimant was only 20 years and he is suffering permanent disability because of amputation of both legs below knee. This permanent disability certificate (Exh.41) itself is sufficient to hold that the claimant has sustained 100 per cent functional disability due to amputation of both legs below knee joint.

9. Roznama of the petition shows that initially show cause notice and subsequently bailable warrant of Rs.500/- was issued to the doctor to compel his presence. Dr. Sachin Umbrekar (PW 3), who treated the claimant on 23.11.2011 has admitted in his cross-examination that claimant can do routine work activities with the help of Artificial limbs. However, from the manner in which this Medical Officer deposed before the Court, it appears only because he was compelled to

appear before the Tribunal and depose, he was bent upon to depose that claimant can do routine activities with the help of artificial limbs. In his examination-in-chief itself he has deposed that with the help of artificial limbs the claimant can climb in the truck though in the previous statement he deposed that claimant cannot walk without support as his both the legs are amputated below knee. Thus, much importance cannot be given to the admission given by Dr. Sachin Umbrekar (PW3) that claimant can do his routine activities with the help of artificial limbs.

10. Otherwise also, even the doctor is not certain what are the expenses of artificial limbs, as, to the Court question, he admits that cost of artificial limbs starts from Rs.50,000/- depending upon its quality. No artificial limb is provided to the claimant by Government Hospital or by any other authority. Therefore, at this stage, only one conclusion is to be drawn that due to amputation of both legs the claimant has sustained 100 per cent loss of future income.

11. As the claimant has proved that prior to the accident he used to draw salary of Rs.6,000/-, his annual income can be assessed as Rs.6000x12=72000/- In addition to this, in view of "**National Insurance Company Ltd. Vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70]**, as the claimant is on fixed monthly salary, below the age of 40 years, 40 per cent amount is to be added towards loss of future prospects, which is assessed as Rs.28,800/-. Thus, annual income of the claimant is assessed as Rs.72000+28800=100800/-.

12. On the basis of permanent disability certificate (Exh.41), it becomes clear that age of the claimant was 20 years at the time of accident. Therefore, in view of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr." [2009 (5) Mh.L.J. (SC) 775]**, multiplier of 18 will be applicable. Thus, loss of future income is assessed as Rs.100800x18=1814400/-. The claimant has filed bill issued by Sai Surgical and Accident Hospital (Exh.42), which shows that towards hospital and

surgical charges, claimant has paid Rs.30,000/-. The bills of medicine (Exh.43) show that for treatment, claimant purchased medicine of worth Rs.8349/-. Thus, under the head of medical expenses, claimant is entitled to Rs.38349/-. The discharge card (Exh.34) shows that claimant was admitted in Sai Surgical and Accident Hospital on 23.5.2011 and was discharged on 8.6.2011. Thus, claimant was hospitalized for the period of 17 days. Thus, he sustained actual loss of income for the period of 17 days due to loss of his salary. Thus, considering Rs.200/- salary per day, claimant is entitled to compensation of Rs.200x17=3400/- towards actual loss of income.

13. In addition to this, due to amputation of both legs for the entire life the claimant cannot walk without assistance and it also resulted into loss of his future marriage prospects. Therefore, under the head of loss of amenities, compensation of Rs.100000/- is to be awarded and loss of expectation of life and loss of marriage prospects, compensation of Rs.50000/- needs to be awarded.

Under the head of nourishing food, compensation of Rs.30000/- will be adequate. As on account of accidental injuries, both legs of the claimant were amputated, under the head of pain, suffering and trauma, additional compensation of Rs.50000/- needs to be awarded. As the claimant was hospitalized for the period of 17 days, he must be attended by one attendant. Thus, considering Rs.1,000/- per day as attendant charges, compensation of Rs.1000x17=17000/- would be appropriate.

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

Sr.No.	Particulars of Head	Amount (Rs.)
1	Loss of future income	18,14,400/-
2	Loss of actual income	3,400/-
3	Medical expenses	38,349/-
4	Loss of amenities	1,00,000/-
5	Loss of expectation of life and marriage prospects	50,000/-
6	Nourishing food	30,000/-
7	Pain, suffering & trauma	50,000/-
8	Attendant charges	17,000/-
	Total	21,03,149/-

This compensation of Rs. 21,03,149/- (Rs. Twenty One Lac Three Thousand One Hundred Forty Nine only) shall be inclusive of compensation received under no fault liability. Appellant is also entitled to interest on the compensation amount at the rate of nine per cent per annum from the date of filing of petition till realization of the amount. It follows that this appeal deserves to be allowed.

15. Accordingly, I hold that First Appeal No. 4559 of 2017 is allowed. The judgment and award, passed by the Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No. 339 of 2011 is modified to enhance the compensation amount to the extent of Rs.21,03,149/- inclusive of no fault liability amount with interest at the rate of nine per cent per annum, from the date of filing of petition, till realization of the compensation amount. Respondent nos. 1 and 2 are jointly and severally liable to pay this compensation to the claimant. Parties shall bear their respective costs of the appeal. Deficit court fee, if any, be

recovered from the claimant, as per rules.

[**SUNIL K.KOTWAL, J.**]

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