

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

FIRST APPEAL NO. 1605 OF 2017

Ravibhushan Bhanudas Jadhavar
Age : 42 yrs, occu.: service
R/o Police Head Quarters, Nagar
Road, Beed.

Appellant.

Versus

1. Muthusamy C. China Thambi
Age : major, occu.: truck owner
R/o 5/22, Maniyaram Thottam
Gandhi Ashram, Nallipalayam,
Tq. Tiruchengode,
District Nammakkal (Tamilnadu).

2. Royal Sunderam Alliance Insurance
Company Ltd., 8/H-1, Mangalam
Building, Four Roads, Salem
Pattullos Road, Chennai.

Respondents.

Mr. S.S. Jadhavar, Advocate for the appellant.

Mr. A.S. Deshpande, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 4th December 2018.

Judgment pronounced on : 11th December 2018.

JUDGMENT.

1. This appeal is directed against judgment and award passed by Member, Motor Accident Claims Tribunal, Beed (hereinafter referred to as "Tribunal") in Motor Accident Claim

Petition No.70/2011, awarding compensation of Rs. 1,37,901/- in injury claim petition.

2. Appellant is the original claimant. Respondent No.1 is owner of the offending vehicle and respondent No.2 is its Insurance Company.

3. The facts, in brief, leading to institution of this appeal are that, on 09.06.2010 at village Saramkunda Phata, dash was given to the claimant by offending truck bearing registration No. TN-34/E-5587 when the claimant was trying to cross the road for boarding his bus. In that accident, claimant sustained fracture injury to his right hand which was operated and treated at Rural Hospital, Washi, Deep Hospital, Beed, Nityaseva Hospital at Beed and Swasthiyog Pratishthan, Miraj. Despite the medical treatment, the claimant sustained 35% permanent disability and he has restricted movement to his right hand. Accordingly, claimant claimed compensation of Rs. 8,00,000/-.

4. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of offending vehicle and

there was no breach of terms and conditions of policy of insurance. Accordingly, the above-said compensation was awarded. Against that award no cross-objection or appeal is preferred by Insurance Company. Therefore, in the present appeal I have to determine only just and reasonable compensation payable to the claimant for the injuries sustained in above-said accident.

5. Heard Mr. Jadhavar, learned Counsel for the appellant / claimant and Mr. A.S. Deshpande, learned Counsel for respondent No.2 / Insurance Company.

6. Learned Counsel for the appellant/claimant submits that due to 35% permanent disability the claimant has lost his opportunities of departmental promotion. He submits that till today the claimant is not promoted and he is Head Constable. He has also pointed out that the Tribunal did not award separate compensation under distinct heads.

7. Learned Counsel for the Insurance Company supported the judgment of the Tribunal by submitting that

despite sustaining accidental injuries, the claimant is fully recovered and he continued his service. He submits that not getting promotion by claimant cannot be connected with accidental injuries or any permanent disability. His next contention is that the medical evidence falls short to prove permanent disability and loss of earning capacity on account of permanent disability.

8. In the case of personal injury matters, there is a landmark judgment in the case of **“Raj Kumar Vs. Ajay Kumar and another”** [2011 (2) Mh.L.J. 569], where the Apex Court held that in personal injury cases compensation is to be awarded under the following heads :-

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).

9. In the same case the Apex Court laid down the guideline that in routine personal cases, compensation will be awarded under head of expenses regarding treatment, hospitalization, medicines, transportation, nourishing food, loss of earning during the period of treatment and the damages for pains, suffering and trauma. Only in serious cases of injury, where there is specific medical evidence, corroborating the evidence of claimant, that compensation will be granted under the heads of loss of future earning on account of permanent disability, future medical expenses, loss of amenities and loss of expectation of life. The apex Court also held that in personal injury cases the Tribunal has to assess effect of permanent disability of earning capacity of the injured and after assessing the loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money, to arrive at the future loss of earning. The tribunal has to consider whether the

disablement is permanent total disablement or permanent partial disablement and if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of limb on the functioning of the entire body, that is the permanent disability suffered by the person. The tribunal has to consider the avocation, profession and nature of the work of claimant before the accident and also his age. It has to ascertain as to what activities claimant could carry on inspite of permanent disability and what he could not do as a result of permanent disability. The Tribunal has to consider whether the claimant was prevented or restricted from discharging his previous activities and functions. Regarding medical evidence the Apex Court has opined that the Tribunal should act with caution, if it is proposed to accept the expert evidence of doctor, who did not treat the injured but who give disability certificate, without proper medical assessment. Where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding genuineness of such certificate. Mere production of disability certificate or discharge certificate will not be proof of extent of disability stated therein unless the doctor who treated the claimant or who

medically examined and assessed extent of disability of claimant is tendered for cross-examination with reference to the certificate. The percentage of permanent disability cannot be assumed to be the percentage of loss of earning capacity.

10. Thus, keeping in mind the above-referred guidelines issued by the Supreme Court, if the evidence placed on record by the claimant is considered, it emerges that claimant Ravibhushan (PW-1) deposes that he has restricted movement of his right hand due to accidental injuries and he would not be able to do any work in future and he has to depend on another person for his personal activities. The medical evidence of Dr. Malve (PW-2) does not support this contention. Dr. Malve (PW-2) merely deposes that the claimant was operated in Dr. G.S. Kulkarni Hospital at Miraj and though he has identified his signature on permanent disability certificate (Exhs.41 and 42), in his entire evidence he has not whispered a word regarding restricted movement of right hand of claimant as a result of permanent disability due to accidental injuries.

11. The disability certificate (Exh.41) issued in proper

form by Dr. Malve (PW-2) is a good example as to how the Medical Officers issue disability certificate mechanically without even application of mind. In the disability certificate (Exh.41) it is nowhere mentioned as to which organ of the body of claimant was permanently impaired due to any accidental injury. The second disability certificate (Exh.42) is neither in proper form nor the contents of this certificate are duly proved by Dr. Malve (PW-2). Therefore, a vague statement of Dr. Malve (PW-2) that due to disability sustained to the claimant his working capacity is reduced, is not sufficient to hold that due to injuries sustained in the above-said accident the claimant has become permanent disabled person and thereby lost his earning capacity in any manner.

12. Otherwise also, from the evidence of claimant, it emerges that even after the accident he continued his service as Head Constable and he regularly received salary even at the time of accident. Even hike in the salary was given to him. From his cross-examination it also emerges that he did not inform his department about his physical disability and even he was not informed by his department that he was unable to perform his

duty due to any type of disability. Thus, these admissions on record are sufficient to hold that even after sustaining accidental injuries, the earning capacity of the claimant as Police Head Constable is not affected in any manner. Therefore, the claimant is not entitled to any compensation under the head of loss of future income.

13. The claimant claims that he was admitted in Rural Hospital on the date of accident i.e. on 09.06.2010 and subsequently shifted to Deep Hospital, Beed for better treatment. He claims that on 11.06.2010 he was again shifted to Nityaseva Hospital, Beed and he was discharged on 20.06.2010 as indoor patient. On 31.10.2011 he was admitted at Swasthiyog Pratishthan, Miraj and he was discharged on 10.11.2011. Thus, the claimant was hospitalized for the period of total 22 days for his treatment. However, as admitted by claimant during this period, he has received his regular salary from the department. Therefore, no compensation can be awarded to the claimant under the head of loss of income during treatment.

14. However, it cannot be ignored that during the period of hospitalization he was attended by his family members in the hospital. By guess-work, the expenditure of attendant is assessed as Rs. 500/- per day. Thus, for 22 days of the period of hospitalization, the claimant is entitled to compensation of Rs. 11,000/- under the head of attendant charges. As the claimant was shifted from one hospital to another for his medical treatment up to Miraj, under the head of transportation charges, the claimant is entitled to compensation of Rs. 20,000/-.

15. The Insurance Company has not disputed medical expenses incurred by the claimant. The bills of medical expenses placed on record at Exh.36/1 to 36/20 show that the claimant had spent an amount of Rs. 67,901/- for his medical treatment. Thus, the claimant is entitled to compensation of Rs. 67,901/- under the head of medical expenditure.

16. Considering the nature of the injuries sustained by claimant as bone fracture and period of medical treatment, I hold that under the head of expenditure of nourishing food the claimant is entitled to compensation of Rs. 25,000/-, as awarded by the Tribunal.

17. So also, considering the fracture injury to the right hand of claimant and surgeries undergone by him at different hospitals, under the head of pains, suffering and trauma, compensation of Rs. 50,000/- deserves to be granted to the claimant.

18. Though the learned Counsel for the claimant submits that due to permanent disability the claimant lost opportunity of promotion, the said proposition is not acceptable for the simple reason that Police Department was never informed by the claimant or anybody regarding permanent disability of the claimant and even department had never issued any memo or notice to the claimant regarding his insufficiency to perform his duties on account of his physical disability. Therefore, for not getting promotion in the department, the claimant cannot blame his physical disability. But there may be some departmental reasons for not promoting the claimant.

19. As the Medical Officer Dr. Malve (PW-2) has not whispered a word regarding the alleged restricted movement of right hand of claimant due to fracture injury, merely on the basis

of oral contention of the claimant compensation cannot be granted under the head of loss of amenities, as ruled by the Apex Court in the case of “**Raj Kumar Vs. Ajay Kumar**” (supra). For the same reason no compensation can be awarded under the head of loss of expectation of life. Thus, I hold that the claimant is entitled to following compensation under different heads:-

Medical expenditure	:-	Rs. 67,901/-
Nourishing food	:-	Rs. 25,000/-
Transportation charges	:-	Rs. 20,000/-
Attendant charges	:-	Rs. 11,000/-
Pain, suffering & trauma	:-	<u>Rs. 50,000/-</u>
Total	:-	Rs. 1,68,901/-

(Rupees One Lakh Sixty Eight Thousand Nine Hundred One)

20. The claimant is also entitled to interest on this compensation amount at the rate of Rs. 9% per annum from the date of filing of petition till realization of compensation amount. It shall be inclusive of the amount received under “no fault liability”.

21. It follows that this appeal deserves to be partly allowed. Accordingly First Appeal No.1605 of 2017 is partly allowed. The award passed by the Motor Accident Claims

Tribunal, Beed in Motor Accident Claim Petition No.70/2011 is modified to enhance the compensation to the tune of Rs.1,68,901/- (Rupees One Lakh Sixty Eight Thousand Nine Hundred and One) inclusive of the amount received under the head “no fault liability”, alongwith interest @ Rs.9 % per annum from the date of filing of petition till realization of entire amount.

22. Deficit Court fees, if any, be recovered from the claimant.

23. Parties to bear their respective costs of the appeal.

The appeal is disposed of in the above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/