IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1670 OF 2017

Shri Surendra Babulal Jain,
age 39 years, occ. Nil,
R/o 181, Polan Peth,
Jalgaon, Dist. Jalgaon ...Appellant
[Orig. Claimant]

VERSUS

1] The New India Insurance
Company Ltd. Through Manager,
Mandore Market, Dhadiwala
Bungalow, Mehrun Road,
Jillha Peth, Jalgaon,

2] Shri Dwarika Nath Rai,
age 42 years,
Occ. Transport Business,
R/o 37/1, Vivekanand Road,
Kolkata 700 035 (W.B.) ...Respondents
[Orig. Respondents]

...

Mr. M.M.Bhokarikar, advocate for appellant
Mr. M.M.Ambhore, advocate for respondent no.1
Respondent no. 2 served

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING
THE JUDGMENT : 3.10.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 9.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 143 of 2005, awarding total compensation of Rs.9,14,213/- with interest at the rate of 7.5 per cent per annum, from the date of petition, till its realization.

2. Respondent no.1 is insurer of offending truck bearing registration No. WB-23/A-3017 and respondent no.2 is registered owner of that truck.

3. Facts, in nut shell, are that on 9.10.2004 at about 9.30 p.m., when the appellant was returning from service place i.e. Jain Irrigation System Limited, Jalgaon (Hereinafter referred to as, 'the Company') by his motor cycle, that time offending truck gave dash to the motor cycle of the appellant, resulting into serious head and fracture injuries to the hand and leg of the appellant. Due to accidental injuries, the

appellant sustained 70 per cent permanent disability and he has lost 100 per cent earning capacity. Therefore, claim petition was filed before the Tribunal.

4. Heard Shri M.M.Bhokarikar, learned counsel for the appellant and Shri M.M.Ambhore, learned counsel for respondent no.1.

5. Learned counsel for the appellant submits that before occurrence of the accident, the appellant was in permanent service in above said Company as Supervisor and due to permanent disability sustained in above said motor vehicle accident, the appellant is not in physical condition even to do sitting job. He submits that due to permanent disability the appellant has sustained 100 percent loss of earning capacity.

6. According to the learned counsel for the appellant, appellant was admitted in the hospital for four months and despite treatment by two Specialists, he is not able to walk for the entire

life without assistance. Contention of the learned counsel for the appellant is that at the time of accident the appellant was 35 years old, and therefore 40 per cent loss of future prospects needs to be added in the monthly income of the appellant while assessing the loss of future income. He submits that Personal Manager (PW 2) of the Company has proved salary of the appellant as Rs.8,251/- per month, and therefore, the compensation awarded by the Tribunal needs to be substantially enhanced. He has also drawn my attention towards medical bills for claiming compensation under the head of medical expenses.

7. Learned counsel for respondent no.1 submits that at the time of accident, age of the appellant was 37 years, and therefore, proper multiplier applicable in the case at hand is 15.

His next submissions is that the appellant used to work on fixed salary and there was no chance of promotion in future. Therefore, no income can be added under the head of loss of future prospects.

Next submission of learned counsel for respondent no.1 is that the doctors examined by the appellant do not say about future medical expenses. However, he fairly concedes that the Court may grant reasonable compensation under the head of loss of amenities and loss of expectation of life.

8. After going through the judgment and award, passed by the Tribunal, it reveals that the Tribunal assessed loss of income of Rs.5,24,107/- after considering the monthly salary of appellant at the rate of Rs.3,900/-. The Tribunal assessed future loss of income in proportion to the percentage of permanent disability as 70 per cent. The Tribunal did not consider how far the earning capacity of appellant is affected due to permanent disability.

9. In **"Raj Kumar vs Ajay Kumar and another" [2011 (2) Mh.L.J. 569]**, the Apex Court held that in the personal injury cases, compensation shall be awarded under 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). “

The Apex Court observed that :

“ In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of

> prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. "

10. Regarding assessment of future loss of earning capacity due to permanent disability, in this case, the Apex Court held that if the Tribunal concludes that there is permanent disability, then it will proceed to ascertain its extent based on medical evidence. It has to ascertain whether such permanent disability will affect his earning capacity.

11. In subsequent judgment of three Judges, in "**Jadgdish vs Mohan and others" [AIR 2018 SC 1347]**, the Apex Court observed that the principle

laid down in **Raj Kumar vs Ajay Kumar** (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident who are disabled either permanently or temporary.

12. Claimant Surendra Jain (PW 1) stepped in witness box and deposed regarding details of medical treatment to him. He deposed that due to permanent disability, though he tried to work in the Company accepting the sitting job, he was not able to perform his duty, and therefore, he was dismissed on 25.2.2007. According to this witness, prior to the accident he used to earn Rs.8,500/- per month. As he sustained permanent disability, he has sustained 100 per cent earning capacity. The version of claimant is also corroborated by the testimony of Ramdas Ingale (PW 2), who works as Personal Manager in the Company. He deposed that since 1990 the claimant used to work as Supervisor in dispatch department of the Company. He has also made it clear that after the accident due to permanent disability, though sitting job was

offered to the claimant, he was unable to perform his duty, and therefore, the claimant was terminated on 25.2.2007. He has proved the letter of termination, dated 25.2.2007.

13. In addition to this, Dr. Rajesh Jain (PW 3), who is Neuro Surgeon from Jalgaon, deposed regarding brain surgery performed by him for the brain injury sustained by the claimant. According to this witness, as far as brain of the claimant is concerned, he is fully recovered. Thus, it is obvious that due to brain injury, the petitioner has not sustained permanent disability.

14. However, Dr. Sunil Nahata (PW 4) is Orthopedic Surgeon from Jalgaon. He has proved that the claimant was admitted in his hospital from 9.8.2005 to 1.9.2005 and the claimant was treated for knee joint contactures of both knee joints and he was given treatment in five stages after giving anesthesia. According to this witness, the claimant will not be able to walk properly for the entire life. He admits in his cross-examination

that disability of the claimant is not curable and it would not be reduced with physiotherapy. However, he made it clear that the claimant can do sitting work.

15. Therefore, in view of this medical evidence, it becomes clear that due permanent disability, the claimant has not sustained 100 per cent functional disability, but only he cannot walk properly for the entire life, but he can do table work. As the claimant is not able to walk properly for entire life, in future he would not be in a position to work as Supervisor, which requires continuous movement in the Department. However, in view of medical evidence of Dr. Jain (PW 3) and Dr. Nahata (PW 4), the claimant is physically fit to do at least table work. Therefore, I have no hesitation to hold that the claimant has not sustained 100 per cent earning capacity, but it can be said that he has lost at least 50 per cent earning capacity to work as Supervisor or to perform any other duty, which requires continuous physical movement. Therefore, under the head of

loss of future income, compensation needs to be awarded.

16. Personal Manager Ingale (PW 2) has proved the salary slip of the claimant for the month of August, 2004 and September, 2004, which indicate that total salary of the claimant is Rs.8,100/- per month and only professional tax of Rs.175/- is deducted from his salary under the head of Taxes.

17. As ruled by Larger Bench of the Apex Court in "**National Insurance Company Ltd. Vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70]**, monthly income of the claimant is to be considered as actual salary less taxes. Thus, monthly income of the claimant is assessed as Rs.8100-175=7925/.

18. Regarding age of the claimant at the time of accident, no birth certificate is filed on record. However, medical certificates Exhs. 38 and 47 show that at the relevant time of the accident the claimant was 35 years old. As claimant was on fixed salary of permanent job in the Company, in

view of law settled by the Apex Court in the case of **National Insurance Company Ltd. Vs Pranay Sethi** (supra), 40 per cent amount shall be added on the fixed salary, as claimant is below the age of 40 years. Thus, 40 per cent addition in monthly salary of Rs.7.925/- is equal to Rs.3,170/-. Thus, monthly income of the claimant is assessed as Rs.7925+3170=11095/-. Annual income of the claimant is assessed as Rs.11095x12=133140/-.

19. As claimant was 35 years old at the time of accident, multiplier of 16 is applicable in view of **“Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.” [2009 (5) Mh.L.J. (SC) 775].** Thus, loss of dependency is assessed as Rs.133140x16=2130240/-. As observed above, the claimant has lost 50 per cent earning capacity. Therefore, out of total income of the claimant, 50 per cent amount is to be deducted. Thus, 50 per cent amount of Rs.21,30,240/- is equal to Rs.10,65,120/- Thus, the appellant/claimant is entitled to compensation of Rs.10,65,120/- under

the head of loss of future income.

20. From the evidence of Dr. Jain (PW 3), it emerges that the claimant was admitted in his hospital from 9.10.2004 to 13.11.2004 and thereafter from 25.11.2004 to 11.12.2004 and on 12.12.2004 to 13.12.2004. Dr. Nahata (PW 4) has deposed that the appellant was admitted in his hospital from 9.8.2005 to 1.9.2005. As such for the period of hospitalization i.e. 79 days the appellant has sustained loss of his monthly salary. Thus, the claimant is also entitled to compensation of Rs.18,491/- under the head of loss of actual income during the period of hospitalization.

21. The Tribunal has calculated the medical bills with the consent of learned counsel for both the parties and assessed medical expenses as Rs.2,90,053/-. Thus, under the head of medical expenses Rs.2,90,053/- needs to be awarded as compensation.

22. In addition to this, considering the

injuries sustained by the claimant, damages of Rs. 50,000/- needs to be awarded under the head of pain, suffering and trauma. As the claimant is unable to walk as normal person, for the entire life, compensation of Rs.50,000/- is awarded under the head of loss of amenities and Rs.50,000/- is awarded under the head of loss of expectation of life. Under the head of nourishing food compensation of Rs.30,000/- will be just and proper considering the period of hospitalization, as the appellant was in the hospital for the period of 79 days. During this period, somebody must have attended the claimant in the hospital. Thus, considering the attendant charges of Rs.1,000/- per day, compensation of Rs.1000x79=79000/- needs to be awarded under the head of attendant charges.

23. None of the doctors deposed regarding future medical expenses of the claimant. Therefore, no compensation can be awarded under the head of future medical expenses. Accordingly, I hold that the appellant/claimant is entitled to total following compensation under different heads.

Sr.No.	Particulars of Head	Amount (Rs.)
1	Loss of future income	10,65,120/-
2	Loss of actual income	18,491/-
3	Medical expenses	2,90,053/-
4	Pain, suffering & trauma	50,000/-
5	Loss of amenities	50,000/-
6	Loss of expectation of life	50,000/-
7	Nourishing food	30,000/-
8	Attendant charges	79,000/-
	Total	16,32,664/-

24. The claimant is also entitled to interest on this compensation amount of Rs.16,32,664/- at the rate of nine per cent per annum, from the date of filing of petition, till realization of the compensation amount. The compensation amount shall be inclusive of compensation received by the claimant under no fault liability.

25. Accordingly, I hold that First Appeal No. 1670 of 2017 deserves to be allowed. Accordingly, appeal is allowed. The compensation awarded to the claimant in Motor Accident Claim Petition No. 143 of 2005 is enhanced to the extent of Rs.16,32,664/-, 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. 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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