

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

FIRST APPEAL NO. 877 OF 2015

Shri Sanjay Shahadu Patil,
age 30 years,
occupation agriculture,
R/o Ganeshpur, Taluka Chalisgaon,
District Jalgaon

...Appellant
[Orig. Claimant]

VERSUS

1] Shri Subhash Dhudaku Patil,
age 33 years, occ. Car Owner,
R/o Plot No. 12,
Varsha Wadi, Mohadi Upanagar,
At and Post : Dhule,
District Dhule,

2] The New India Assurance
Company Ltd., 3rd floor,
New India Centre,
17A, Kuprej Marg, Mumbai

...Respondents
[Orig. Respondents]

FIRST APPEAL NO. 1904 OF 2015

Shri Prabhakar Chudaman Patil,
age 26 years,
occupation agriculture,
R/o Borkheda Bk. (Pirache),
Taluka Chalisgaon,
District Jalgaon

...Appellant
[Orig. Claimant]

VERSUS

1] Shri Subhash Dhudaku Patil,
age 30 years, occ. Car Owner,
R/o Plot No. 12,
Varsha Wadi, Mohadi Upanagar,
At and Post : Dhule,

District Dhule,

2] The New India Assurance
Company Ltd., 3rd floor,
New India Centre,
17A, Kuprej Marg, Mumbai

...Respondents
[Orig. Respondents]

...

Mr. M.M.Bhokarikar, advocate for Appellant

Mr. S.G.Chapalgaonkar, advocate for Respondent no.2

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 06.12.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 17.12.2018

J U D G M E N T :

First Appeal No. 877 of 2015 is filed against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 290 of 2007 and First Appeal No. 1904 of 2015 is filed against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 289 of 2007.

2. Respondent no.1 is owner of the offending car No. MH-18/P-162 and respondent no.2 is the

insurance company of the said car.

3. These both appeals arise against the judgment and award, passed by the Tribunal in respect of motor vehicle accident, dated 31.12.2005, which took place at 10.00 p.m. on Chalisgaon-Dhule road when injured Sanjay Shahadu Patil was travelling as pillion rider on the motor cycle driven by injured Prabhakar Chudaman Patil. In that accident, both the injured sustained fracture injuries resulting into permanent disability. Therefore, they filed above referred two motor accident claim petitions against the owner and insurance company of the offending car, which gave dash to the motor cycle of injured. Therefore, these both the appeals are disposed of by this common judgment.

4. Heard Mr. M.M.Bhokarikar, learned counsel for the appellant and Mr. S.G.Chapalgaonkar, learned counsel for respondent no.2 insurance company.

5. In Motor Accident Claim Petition No. 290 of 2007, the Tribunal awarded compensation of Rs.3,00,400/- and in Motor Accident Claim Petition No. 289 of 2007, the Tribunal awarded compensation of Rs.1,20,000/-. These both appeals are for enhancement of the compensation. No cross appeal or cross-objection is filed by the owner of the offending vehicle or by insurance company. Therefore, my discussion will be restricted only with fair and reasonable compensation payable to both the claimants.

**QUANTUM OF COMPENSATION PAYABLE TO THE INJURED
IN MOTOR ACCIDENT CLAIM PETITION NO. 290 OF 2007**

6. In this case, the injured was 27 years old at the time of accident and Dr. Zende (PW 2) has proved fracture injury of right fumer bone with fracture of patella to the claimant. He has proved injury certificate (Exh.21). However, Dr. Jayawant Patil (PW 3) has duly proved the permanent disability certificate (Exh.22), which shows 50 per cent permanent disability. However, he has not mentioned whether this percentage of disability is in reference to right leg or whole body. Otherwise

also, it is not case of amputation of leg. Thus, obviously percentage of disability given by Dr. Patil (PW 3) is exorbitant and not acceptable.

7. Learned counsel for appellant submits that due to permanent disability the claimant sustained loss of earning capacity as agriculturist and businessman. Dr. Jayawant Patil (PW 3), in his entire evidence nowhere whispered regarding the loss of earning capacity by the claimant due to permanent disability. He has not whispered a word about functional disability of claimant. The vague statement of Dr. Patil (PW 3), in his cross-examination that claimant cannot do work is not sufficient to hold that the claimant has sustained loss of income. Even a man having one imputed leg can certainly supervise the agricultural work, though he may not do hard labour work.

8. 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. "

9. 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.

10. Considering the above referred legal position, if evidence of Dr. Jayawant Patil (PW 3) is scrutinized, it reveals that this expert witness cannot prove that due to the accidental injuries sustained by claimant he has lost his earning capacity as agriculturist or businessman.

11. On the other hand, though claimant Sanjay (PW 1) deposed before the Court that after the accident he is unable to do any work, this contention is not supported by medical evidence.

12. Therefore, considering the law settled by Apex Court in above cited authority and this Court in First Appeal No. 1670 of 2017, decided on 9.10.2018, the claimant miserably failed to prove that due to accidental injuries he has lost his earning capacity in any manner. Therefore, under the head of loss of future income, no compensation can be awarded to the claimant.

13. However, the claimant has filed bills worth Rs.75,362/- to prove the medical expenditure. These bills are not disputed by learned counsel Shri S.G.Chapalgaonkar for respondent insurance company.

Dr. Zende (PW 2) has proved the bill of X-ray (Exh.35) worth Rs.840/-, bill of hospitalization (Exh.36) for Rs.40000/-, (Exh.37) for Rs.7250/-, and additional bills of medicine (Exhs. 38/1 to 38/3) for Rs.530+803+163, which come to $Rs.840+40000+7250+530+803+163=49586/-$.

Therefore, I hold that under the head of medical expenditure, the claimant is entitled to compensation of $Rs.75362+49586=124948/-$.

From the evidence of Dr. Zende (PW 2), it emerges that the claimant was admitted in the hospital from 1.1.2006 up to 11.2.2006. Thus, it can be gathered that the claimant was hospitalized for the period of 42 days. Certainly during this period, somebody would have attended the claimant. Considering the charges of attendant at the rate of Rs.500/- per day, the claimant is entitled for attendant charges of $\text{Rs.}42 \times 500 = 21000/-$.

In addition to this, though claimant has claimed compensation for the loss of income during the period of hospitalization, no evidence has been placed on record by claimant that he used to run any business or he has any income from the business. Even, no evidence has been placed on record by the claimant regarding loss of income during the period of hospitalization. On the other hand, record of right of agriculture land (Exhs. 23 and 24) shows that the said land is recorded in the name of mother of the claimant. Even, it is not proved that the claimant is owner of any agricultural land, and therefore, no compensation can be awarded to the claimant under the head of

loss of income during the period of hospitalization.

However, as claimant has sustained fracture injury to his leg and has undergone surgery, under the head of pains, suffering and trauma, the claimant is entitled to compensation of Rs.50,000/-.

As both the doctors examined by the claimant have not whispered a word regarding loss of amenities by claimant due to the injuries sustained by him, no compensation can be awarded under the head of loss of amenities.

At the most, compensation can be awarded under the head of nourishing food. Considering the period of hospitalization, I hold that the claimant is entitled to compensation of Rs.10,000/- towards nourishing food.

Accordingly, I hold that the claimant is entitled to following total compensation under different heads.

Medical expenditure	: Rs.124948/-
Attendant charges	: Rs. 21000/-
Pain, suffering and	: Rs. 50000/-

trauma

Nourishing food	: Rs. 10000/-

Total	: Rs.205948/-

After going through the award, it emerges that the Tribunal awarded compensation of Rs.3,00,400/- to the claimant. Therefore, in this appeal, there cannot be enhancement in the compensation awarded by the Tribunal. At the most, the rate of interest on the compensation amount can be enhanced to the extent of nine per cent per annum from the date of filing of claim petition till realization of the compensation amount.

In the circumstances, I hold that First Appeal No. 877 of 2015 can be partly allowed only to enhance the rate of interest on the compensation amount at the rate of nine per cent per annum from the date of filing of claim petition till realization of compensation amount.

QUANTUM OF COMPENSATION PAYABLE
TO THE INJURED IN MOTOR ACCIDENT
CLAIM PETITION NO. 289 OF 2007

14. In this matter, the claimant Prabhakar

Chudaman Patil is the injured, who deposed on oath that due to injuries sustained in the motor vehicle accident, he is not able to look after his agricultural land, and therefore, he has sustained loss of income from agricultural land as well as from dairy business. However, from his cross-examination, it emerges that he has not filed any documentary evidence about his loss of income. On the other hand, claimant has admitted in his cross-examination that he is cultivating his agricultural land. In the circumstances, no compensation can be awarded under the head of future loss of income due to permanent disability.

Otherwise also, Dr. Zende (PW 2), who treated the claimant after accident, merely deposed that the claimant was admitted in his hospital on 1.1.2006 and he was discharged on 11.2.2006. Dr. Zende (PW 2) has only proved fracture of right femur bone and right tibia fibula bone of the claimant. This medical officer has not whispered a word regarding any type of permanent disability sustained by the claimant. He has only proved the bills (Exhs. 37 to 39) issued by him for the period

of hospitalization. Dr. Zende has also proved certificate Exh.40 to the effect that for removal of implant the future medical expenditure of Rs. 35,000/- would be required.

After remand from High Court, the claimant has examined Dr. Patil (PW 3), who has proved only permanent disability certificate (Exh.22). It is to be noted that this expert witness has nowhere deposed regarding any type of permanent disability sustained by claimant or regarding loss of earning capacity of the claimant. This witness in vague terms has stated in his cross-examination that claimant could not do the entire work.

Thus, otherwise also, the evidence of medical expert brought on record by claimant is of no help to prove that due to injuries sustained in above said accident, the claimant sustained any type of permanent disability and he lost his earning capacity in any manner.

However, it cannot be ignored that claimant was hospitalized from 1.1.2006 to 11.2.2006 i.e. for the period of 42 days. During this period, somebody would have attended the claimant.

Therefore, considering the attendant charges at the rate of Rs.500/- per day, the claimant is entitled for attendant charges of $\text{Rs.}42 \times 500 = 21,000/-$.

In addition to this, the claimant is entitled to compensation of Rs.10,000/- towards nourishing food.

As claimant was hospitalized for 42 days and he has not brought on record any evidence that during this period he sustained any type of loss of agricultural income, no compensation can be awarded to the claimant under the head of loss of income during the period of hospitalization.

However, the claimant has filed bills of medicine worth Rs.62052.85, which are not disputed by learned counsel for the insurance company.

In addition to this, Dr. Zende (PW 2) has proved the bills Exh.37 for Rs.40000/-, Ex. 38 for Rs.400/-, Ex.39 for Rs.1500/-, X-ray charges of Rs.720/- under Exh. 29/27 and bill of blood bank Exh. 29/28 for Rs.500/-. Thus, the claimant is entitled to compensation under the head of medical expenditure of $\text{Rs.}62052 + 40000 + 400 + 1500 + 720 + 500 = 105172/-$.

Dr. Zende (PW 2) has also proved certificate Exh.40, which shows that for removal of implant in future the claimant would require Rs.35,000/-. Therefore, under the head of future medical expenditure compensation of Rs.35,000/- deserves to be granted.

As claimant sustained fracture injury and has undergone surgery in the hospital of Dr. Zende, under the head of pains, suffering and trauma, the claimant is entitled to compensation of Rs.50,000/-.

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

Medical expenditure : Rs. 105172/-

Attendant charges : Rs. 21000/-

Pain, suffering and : Rs. 50000/-
trauma

Future medical : Rs. 35000/-
expenditure

Nourishing food : Rs. 10000/-

Total : Rs.221172/-

Claimant is also entitled to interest on this compensation amount at the rate of nine per

cent per annum from the date of filing of claim petition till realization of the compensation amount. It follows that First Appeal No. 1904 of 2015 deserves to be partly allowed to enhance compensation to the tune of Rs.2,21,172/-.

15. In view of above discussion, First Appeal No. 877 of 2015 and First Appeal No. 1904 of 2015 are partly allowed. The award passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 290 of 2007 is modified only to enhance the rate of interest on the compensation amount at the rate of nine per cent per annum from the date of filing of claim petition till realization of the compensation amount.

The award passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 289 of 2007 is modified to enhance the amount of compensation to the tune of Rs.2,21,172/- with interest thereon at the rate of nine per cent per annum from the date of filing of claim petition till realization of the compensation amount. This amount shall be inclusive of compensation received

under no fault liability.

16. Parties shall bear their respective costs of appeals.

17. Deficit court fee, if any, be recovered from the claimants, as per rules.

[SUNIL K.KOTWAL, J.]

dbm