IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 796 OF 2003

Ranjanbai d/o Chhaburao Mandlik
Age : 26 years, occu.: education
R/o Village Devgaon, Tal. Newasa,
District Ahmednagar. **Appellant**.

Versus

1. Shivaji Mayanji Mhaske
Age : 48 yrs, occu.: driver/owner
R/o Kukana, Taluka Newasa,
District Ahmednagar.

2. M/s Nath Roadways, Proprietor
P.No.5, Jaibhawani Housing
Society, Garkheda Parisar,
Aurangabad.

3. United India Insurance Co. Ltd.
Through its Branch Manager,
Ahmednagar. **Respondents**.

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Mr. S.D. Karkare, Advocate for the appellant.
Mr. A.B. Gatne, Advocate for respondent No.3.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 19th October 2018.

Judgment pronounced on : 26th October 2018.

JUDGMENT.

1. The original claimant has preferred this appeal against judgment and award passed by Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred to as "Tribunal") in Motor Accident Claim Petition No.1089/1999, for enhancement of compensation as the compensation of Rs. 2,18,800/- was awarded by the Tribunal. The liability was equally saddled on respondent Nos.1 and 3 and respondent Nos.2 and 3.

2. Respondent No.1 is the owner and driver of the offending jeep bearing registration No. MH-17-C-3657. Respondent No.2 is the owner of offending tanker bearing registration No.MH-21-5392. Respondent No.3 is the insurer of both offending vehicles.

3. No cross objection or cross appeal is preferred by the respondents against the judgment or findings recorded by the Tribunal. Therefore, in this appeal for enhancement of compensation, the discussion will be restricted only with the quantum of compensation.

4. The facts, in brief, leading to institution of this appeal are that, on 01.05.1999 the claimant and her brother were

travelling by offending jeep by Shevgaon to Kukane road. At about 1.30 to 1.45 p.m. near Gumphegaon S.T. Stand, the offending tanker came from opposite direction in high speed. Both the offending vehicles brushed with each other and thereby right hand of the claimant, who was 22 years unmarried young girl, was amputated from upper arm portion, on the spot of the accident. Despite lengthy medical treatment to the claimant, there was 60 % permanent disability to the claimant due to amputation of her right hand from upper arm portion. Therefore, the claim petition for compensation arose.

5. After considering the evidence placed on record by parties, the Tribunal awarded above-said compensation. Being dis-satisfied with the quantum of compensation, the claimant has preferred this appeal.

6. Heard Mr. S.D. Karkare, learned Counsel for the appellant and Mr. A.B. Gatne, learned Counsel for respondent No.3 – Insurance Company. Respondent Nos.1 and 2 did not respond, though served with notice.

7. Learned Counsel for the appellant submits that in motor vehicular accident, which occurred on 01.05.1999, the

entire right hand of the claimant was amputated, which resulted into loss of 100% earning capacity of the claimant. He submits that at the time of accident the claimant was continuing her study and she was also earning by working at some places. He submits that the Tribunal assessed meager notional income at the rate of Rs. 1000/- per month and awarded meager compensation of Rs. 2,18,800/-.

8. His next submission is that the Tribunal did not consider the loss of future prospects and loss of future income in proper manner. No compensation is paid under the heads "loss of amenities and loss of marriage prospects" of the claimant. He prays for enhancement of compensation. He placed reliance on the judgment in the case of **"Subulaxmi Vs. M.D. Tamil Nadu State Transport Corporation and another" (2012 AIR SCW 5945)**.

9. Learned Counsel for respondent No.3 – Insurance Company submits that the notional income considered by the Tribunal is appropriate. He submits that the Medical Officer is not examined by the claimant to prove permanent disability, and therefore, no compensation can be awarded for loss of future

prospects or future income. He has contended that reasonable compensation of Rs. 40,000/- is awarded for medical expenses. As no estimate of artificial limb is placed on record by the claimant, compensation cannot be awarded for expenses of artificial hand. However, learned Counsel for respondent No.3 fairly concedes that for loss of marriage prospects reasonable compensation can be awarded.

10. In the case at hand, to prove permanent disability, for the reasons known to the learned Counsel for the claimant, the concerned Medical Officer is not examined. However, it cannot be ignored that the rule of Evidence Act is not strictly applicable in motor accident claim petitions filed under Section 166 of the Motor Vehicles Act, as it is only summary enquiry. Otherwise also, the certified copy of Medico-Legal Certificate (Exh.3/4) dated 16.07.1999 shows that at the time of accident the claimant was only 22 years old young girl and in the road accident dated 01.05.1999 her right arm below upper arm was amputated. Even the disability certificate issued by Dr. Anil Bhatia in proper form shows 60% permanent disability due to amputation of right upper limb. Otherwise also, after going through the certified

copies of F.I.R. (Exh.36) and spot panchnama (Exh.35), which can be read in evidence without its formal proof, it emerges that in the accident dated 01.05.1999, right hand of the claimant was amputated from upper arm due to brushing of offending vehicles. Thus, the police papers also show that at the time of accident right hand of the claimant came to be amputated from upper arm when she was travelling by offending jeep. As there is clear evidence regarding amputation of right hand of the claimant from upper arm, no more medical opinion is necessary to hold that the claimant has sustained permanent disability in the above-said motor vehicular accident.

11. So also, from the evidence of brother of claimant Prakash Mandlik (PW-2) it emerges that the claimant is right handed person. Therefore, the claimant being right handed person, cannot write or do major activities by her left hand alone. The various certificates issued by Sports Department indicate that the claimant was champion in running, long-jump and in Kabbaddi. She was also educated upto S.S.C. Standard.

12. It is the matter of common knowledge that person having only left arm cannot run in normal speed like the person

having both upper arms. The reason for this is that with the help of both upper arms body balance is properly maintained at the time of running in high speed as well as even while jumping. Therefore, due to amputation of right arm from the upper arm portion, neither the claimant can run in normal speed in running competition nor she can participate in long jump competition. Even she cannot play the game of Kabaddi only with her left arm, which may be useless in Kabaddi game which requires use of both powerful upper arm to catch or hold the opposite side player. Therefore, due to amputation of right arm, the claimant has lost her career as a sports girl. As the claimant is right handed person, in future she would not be able to write in normal speed and normal manner by her left hand. Therefore, neither she could complete her further education to acquire the Diploma in Education in accordance with her ambition of becoming Teacher, nor she can appear in any competitive written examination to get any suitable table work job. Therefore, she has also lost every opportunity of getting government service or private service, on the basis of her S.S.C. Certificate. In the result, she has also lost the service career. Only having left hand in use, even she would not be able to work as field labour which requires lifting of heavy weight articles and digging the agricultural land with the help of both hands. No ordinary employer will provide her employment even as a field labour. On account of amputation of her powerful right hand, she would not be able to work even as maid servant which also requires help of both hands for cleaning and washing operations. Thus, due to loss of important right upper limb of the body, practically the claimant has lost the maximum opportunities of employment even as a ordinary field labour or maid servant. Considering this overall effect of loss of right hand, on the earning capacity of the claimant, I have no hesitation to hold that on account of amputation of right hand she has sustained at least 75% loss of earning capacity.

13. The Apex Court in the case of "**Arvind Kumar Mishra vs New India Assurance Co. Ltd. & Anr" [(2010) 10 SCC 254]** observed that,

> "7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect

compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand".

14. In the case of **"Raj Kumar vs Ajay Kumar and another" [2011 (2) Mh. L.J. 569]**, the Apex Court has made the legal position very clear, regarding the manner in which the compensation can be awarded in injury claim under the Motor Vehicles Act, 1988, as well as the manner in which loss of earning capacity of the claimant has to be assessed. About different heads under which compensation is to be awarded the Apex Court specified following heads :

"**The 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)".

In the same case 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".

The Apex Court summarised the principles as under :

"(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors".

15. In the case of **“Jagdish vs Mohan and Ors” [AIR 2018 Supreme Court 1347]**, three judges bench of the Apex Court directed that the principles laid down in **“Arvind Kumar Mishra”** (supra) and **“Raj Kumar”** (supra) must be followed by the Tribunals and High Courts in determining the quantum of compensation payable to the victims of the accident who are disabled either permanently or temporarily. In that case, both wrist of the Carpenter were amputated. Therefore, Apex Court held that the said Carpenter has sustained 100% loss of income. The notional income of the Carpenter was assessed as Rs.6,000/- per month.

16. Applying the same ratio in the case at hand, as observed above, the claimant has sustained at least 75% loss of her income due to amputation of right hand. At the time of accident the claimant was 22 years old young girl, who was active in sports activities. The claimant also claims that due to accidental injuries she has become physically handicapped and she was educated upto 10th Standard. According to claimant (PW-1) her marriage settled with one Police Sub Inspector also could not be solemnized on account of amputation of her right leg

and now nobody is ready to marry her. She states that she intended to become a Teacher.

17. Considering the education of the claimant upto S.S.C Standard and sports activities, I have no hesitation to hold that notional income of the claimant shall be assessed at least like income of housewife. In the case of **"Lata Wadhva Vs. State of Bihar" (AIR 2001 SC 3218)**, the Apex Court assessed the notional income of housewife as Rs. 3,000/- per month of the age between 34 to 59 years. This was the notional income in respect of the housewife who died in the mishap dated 03.03.1989. Thereafter no doubt 10 years have been passed. Considering this time gap, certainly there will be escalation of at least wages of the labour. Had the claimant not become handicapped due to amputation of right leg, certainly as an active young girl, she would have earned at least Rs. 5,000/- per month. Therefore, monthly notional income of the claimant is assessed as Rs.5,000/-. As the claimant was below the age of 40 years in view of the verdict of the case of **"National Insurance Company Ltd. Vs. Pranay Sethi and others" (AIR 2017 SC 5157)**, 40% income is to be added toward loss of future prospects. Therefore,

the notional monthly income of the claimant is assessed as Rs. 7,000/-. As the claimant has sustained 75% loss of income, her loss of monthly income would come to Rs. 5,250/-. Thus, her annual loss of income would be Rs.63,000/-.

18. In view of the law settled in the case of **Raj Kumar Vs. Ajay Kumar** (Supra), in injury claim there cannot be any deductions towards personal expenses of the injured. Therefore, considering the age of the injured claimant as 22 years, in the case at hand, the annual income assessed by this Court is to be multiplied by the multiplier of "18" in view of the verdict of **"Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104).** Thus the claimant has sustained loss of future income of Rs. 11,34,000/- (63000 x 18).

19. In addition to this, under the head of medical expenses, compensation is to be awarded. The claimant has filed number of receipts issued by Puna Hospital where she was treated and cash memo issued by medical shops regarding purchase of medicines by the claimant. The insurance company has admitted receipts issued by Puna Hospital which at at Exhs.47 to 72. This amount is of Rs. 40,000/-. Therefore,

compensation of Rs. 40,000/- deserves to be awarded under the head of "medical expenses". In addition to this, in view of the verdict of Apex Court in the Case of **"Subulaxmi Vs. Tamil Nadu State Transport"** (supra) the compensation of Rs.1,50,000/- is to be awarded under the heads pains, suffering and trauma as right hand of the claimant is amputated in entirety. Due to amputation of right hand, claimant can never do any activity with her right hand and it has adversely affected her marriage prospects. Therefore, under the head of "loss of amenities" compensation of Rs. 1,50,000/- deserves to be granted and under the heads of "loss of marriage prospects" and "expectation of life" additional compensation of Rs. 1,50,000/- is to be awarded. No evidence is available on record to prove as to for how many days the claimant was hospitalized for medical treatment. Therefore, compensation cannot be granted under the head of "actual loss of earning". So also, no estimate of artificial limb is filed by claimant. Therefore, compensation for purchasing artificial limb cannot be granted.

20. I hold that the claimant is entitled to following compensation under different heads.

Loss of future earning	:-	Rs. 11,34,000/-
Medical expenses	:-	Rs. 40,000/-
Pain, suffering and trauma	:-	Rs. 1,50,000/-
Loss of amenities	:-	Rs. 1,50,000/-
Loss of future marriage prospects and expectation of life	:-	Rs. 1,50,000/-
Total:-	**:-**	**Rs. 16,24,000/-**

(Rupees Sixteen Lakh Twenty Four Thousand)

21. The claimant is also entitled to interest @ Rs. 9 % per annum on above-mentioned compensation amount from the date of filing of claim petition till realization of entire compensation amount. This compensation shall be inclusive of the amount paid under the head “no fault liability”.

22. Accordingly, I hold that this appeal deserves to be allowed to enhance the compensation.

23. In the result, First Appeal No.796 of 2003 is allowed. The award passed by the Tribunal in M.A.C.P. No.1089 of 1999 is modified to enhance the compensation to the extent of Rs.16,24,000/- (Rupees Sixteen Lakh Twenty Four Thousand) 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. Respondent

Nos.1 and 3 shall jointly and severally liable to pay 50% of compensation and costs of claim petition to the claimants. Respondent Nos.2 and 3 shall jointly and severally liable to pay remaining 50% amount of compensation and costs of the claim petition to the claimants.

24. On deposit of the compensation amount with the Tribunal, 50% amount shall be paid to the claimant through Tribunal by separate account payee cheque and remaining 50% amount shall be invested in fixed deposit in any Nationalized Bank of the choice of claimant, in her name for the period of five years and after maturity of this period, it shall be reinvested for next five years. Claimant will be entitled to receive quarterly accrued interest on fixed deposit amount. Premature withdrawal is not permissible.

25. Tribunal shall inform the concerned bank accordingly. The Tribunal shall keep the fixed deposit receipts in safe custody till the maturity of fixed deposits.

26. Deficit Court fees be recovered from the claimant.

27. Respondent Nos.1 to 3 shall pay costs of the appeal to the appellant / claimant. The appeal is disposed of in the above-said terms.

(SUNIL K. KOTWAL)
JUDGE

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