IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 126 OF 2017

Shaikh Mukhtar Sk. Shadulla
Age : 30 years, occu.: driver
R/o Chikhalwadi, Near Nurani
Masjid, Bhokar, Dist. Nanded. **Appellant**.

Versus

1. G. Ram Mohan Rao
Transport Business & owner
of Truck No.AP 16/X 5585,
R/o At Post Paritala, Taluka
(Mandal) Kanchikacherla,
District Krishna (A.P.State)

2. The Divisional Manager
Oriental Insurance Co. Ltd.
Do-1, PB.No. 719, Upstair
V.D.A. Sales, M.G. Road,
Labbipet, Vijayawada-10,
District Vijayawada
(Andhra Pradesh State)

3. The Divisional Manager
Oriental Insurance Co. Ltd.
Santkrapa Market, Shri Guru
Gobind Singhji Road, Nanded,
District Nanded. **Respondents**.

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Mr. K.M. Nagarkar, Advocate for the appellant.
Mr. Dhananjay Deshpande, Advocate for respondent Nos.2 & 3.

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CORAM : SUNIL K.KOTWAL, J.

Dated : 17 June 2019.

J U D G M E N T :

1. This appeal is directed by original claimant for enhancement of compensation awarded by Motor Accident Claims Tribunal (hereinafter referred to as "Tribunal"), Nanded in Motor Accident Claim Petition (M.A.C.P.) No.324 of 2004.

2. Respondent No.1 is owner and respondent Nos.2 and 3 are the Insurer of the offending vehicle.

3. As this appeal is only for enhancement of compensation, all the facts of the accident need not be reproduced in the appeal at hand. It is suffice to say that on 29.04.2003 the injured, who claims to be the driver, met with the accident on account of dash given by truck bearing registration No. MH-16-X-5585. Due to accidental injuries the right leg of the claimant was amputated above the knee joint. Therefore, claimant filed claim petition before the Tribunal for compensation under Section 166 of the Motor Vehicles Act.

4. After considering the evidence placed on record by claimant, the Tribunal awarded total compensation of Rs. 3,42,720/- including compensation under no fault liability, with interest at the rate of 7.5% per annum from the date of filing of

petition.

5. Heard Mr. K.M. Nagarkar, learned Counsel for the appellant / claimant and Mr. Dhananjay Deshpande, learned Counsel for respondent Nos.2 and 3. None appeared for owner of the offending vehicle.

6. Learned Counsel for the appellant/claimant submits that due to accidental injuries sustained by claimant, his right leg was amputated 100% loss of earning capacity. He submits that the Tribunal erroneously awarded meager compensation by considering percentage of disability instead of considering loss of earning capacity. To substantiate his contention, he placed reliance on the case of **"Raj Kumar Vs. Ajay Kumar and another" [2011 (2) Mh.L.J. 569]**.

7. next contention of learned Counsel for the appellant is that at the time of accident the claimant was 31 years old, and therefore, multiplier of "16" is applicable for assessing loss of future income. He submits that, as a driver, monthly income of the claimant was Rs. 4,000/- per month. He has also pointed out that the Tribunal did not award compensation under the head of loss of future prospects and loss of amenities as well as pains and

suffering. He prays for substantial enhancement of compensation.

8. Learned Counsel for the Insurer supports judgment passed by the Tribunal. He has pointed out that the claimant has not examined his employer to prove his his monthly salary. Even the Medical Officer, who issued disability certificate, is not examined and no bills of medicines are filed. However, he fairly concedes that this Court can award reasonable compensation under the head of loss of amenities and pains and suffering.

9. In the case at hand, neither owner nor Insurer of the offending vehicle has filed cross-objection or cross-appeal to challenge any finding of the Tribunal. Therefore, the points regarding rash and negligent driving by driver of offending vehicle and breach of condition of policy of insurance by owner cannot be reconsidered.

10. 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).

11. 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.

12. In the light of the above-referred legal principles, if the evidence of claimant is assessed together with the documentary evidence placed on record, it becomes clear that the claimant has not filed any bills of medicines on the basis of which certain compensation can be awarded under the head of medical expenditure. Even the employer of claimant is not examined,

13. The salary certificate (Article-B) of claimant is placed on record. However, on the basis of School Leaving Certificate (Exh.44) filed by the claimant, it can be gathered that date of birth of claimant is 1 May 1971. Thus, on the date of accident i.e.

on 29 April 2003 the claimant would be of the age of 32 years. Therefore, while determining loss of future income of the claimant multiplier of "16" is applicable, in view of the law settled by Apex Court in the case of **"Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104)**.

14. No doubt claimant has not examined his employer to prove his exact income. However, it cannot be ignored that at the time of accident claimant was 32 years old able bodied young person. From the cross-examination of the claimant Shaikh Mukhtar (PW-1) learned Counsel for the Insurer has brought on record that at the relevant time of accident the claimant used to work as a driver on the jeep of one Gopal Patil. In further cross-examination only monthly salary of the claimant was disputed by the Insurer. However, in the entire cross-examination the Insurer has nowhere disputed the occupation of claimant as four-wheeler driver. Therefore, in absence of evidence of employer of claimant, his notional monthly income as a driver of four-wheeler cannot be less than Rs. 4,000/-. Accordingly, I hold that notional income the claimant at the time of accident was Rs. 4,000/- per month.

15. No doubt, the claimant has only filed permanent disability certificate (Exh.42), which recites that the claimant was admitted in Government Hospital, Nanded on 29.04.2003 and he was discharged on 29.05.2003. This certificate also recites that right leg of the claimant was amputated above knee joint, and therefore, he was unable to walk, run and drive vehicle. This disability certificate being issued by Medical Officer of Government Hospital Nanded, can be read in evidence though concerned Medial Officer is not examined, for the simple reason that in motor accident claim cases, the provisions of Evidence Act are not strictly applicable. Accordingly, I hold that due to accidental injuries, right leg of the claimant was amputated above knee joint, and therefore, he sustained 100% loss of earning capacity as a driver.

16. As the claimant has lost 100% earning capacity as a driver, considering his young age as 32 years at the time of accident and notional income of Rs. 4,000/- per month, his annual loss of income comes to Rs. 48,000/-. In view of the legal principles settled by Apex Court in the case of **"Raj Kumar Vs. Ajay Kumar"** (supra), in accidental claim cases no amount can

be deducted from the annual income towards personal expenses of the injured. On the other hand, in view of the law laid down in the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. (SC) 70]**, as the claimant was below the age of 40 years private employed person, 40% amount is to be added in the actual income of the claimant towards loss of future prospects. Thus, annual income of the claimant comes to Rs. 67,200/-. After applying multiplier of "16", the loss of future income due to permanent disability comes to Rs.10,75,200/-.

17. Though the claimant has claimed compensation towards medical expenditure, from the cross-examination of claimant Shaikh Mukhtar (PW-1), it also emerges that he obtained medical treatment from Government Hospital and after treatment, he was discharged. In Government Hospital medical treatment is given free of cost. So also the claimant has not filed any bills of medicines purchased by him for his treatment. Therefore, no compensation can be awarded under the head of medical expenditure.

18. As the claimant was admitted in the hospital for a period of one month, he is entitled to compensation of Rs. 4,000/-

under the head of loss of income during the period of hospitalization.

19. As the claimant was hospitalized for a period of 30 days, compensation is to be awarded under the head of attendant charges. Considering the attendant charges at the rate of Rs.200/- per day, the claimant is entitled to compensation of Rs. 6,000/- towards attendant charges.

20. As the right leg of claimant was amputated above the knee joint, one can imagine the pains and trauma undergone by the claimant. Therefore, compensation of Rs. 50,000/- is awarded under the head pains and suffering.

21. Due to amputation of right leg above the knee joint, in future the claimant would be able to walk only with the help of crutches for his entire life. Considering this factor, compensation of Rs. 50,000/- is awarded under the head of loss of amenities.

22. No evidence has been brought on record by the claimant regarding future medical expenditure. Therefore, compensation under that head cannot be awarded. However, additional compensation of Rs. 50,000/- needs to be awarded under the head of expectation of life due to amputation of right

leg. Thus, the claimant is entitled to following compensation under different heads :-

Loss of future earning on account of permanent disability	:-	Rs. 10,75,200/-
Damages for pains, suffering and trauma	:-	Rs. 50,000/-
Loss of amenities	:-	Rs. 50,000/-
Loss of expectation of life	:-	Rs. 50,000/-
Attendant charges	:-	Rs. 6,000/-
Loss of earning during the period of treatment	:-	Rs. 4,000/-
		Rs. 12,35,200/-

(Rupees Twelve Lakh Thirty Five Thousand Two Hundred)

23. The above-mentioned amount is inclusive of the amount already received under the head "no fault liability".

24. As the claimant was dragged upto this Court for getting appropriate compensation, the claimant is also entitled to interest on the compensation amount at the rate of Rs. 9% per annum from the date of filing of petitioner till realization of entire amount. However, as rightly pointed out by the learned Counsel for Insurer that in C.A. No. 2766 of 2012 while condoning the delay of 573 days, this Court has given liberty to the Insurer to raise ground of interest for the period for which the delay was condoned. Therefore, for the delay period of 573

days, the claimant is not entitled to interest on compensation amount.

25. Accordingly, I hold that this appeal deserves to be allowed.

26. In the result, First Appeal No.126 of 2017 is allowed. The award passed by Motor Accident Claims Tribunal, Nanded in M.A.C.P. No. 324 of 2002 is modified to enhance the compensation to the tune of Rs. 12,35,200/- (Rupees Twelve Lakh Thirty Five Thousand Two Hundred only) with interest thereon at the rate of Rs. 9 % per annum from the date of filing of petition till realization of entire compensation amount, excluding the period of 573 days. This compensation shall be inclusive of the amount already received under the head "no fault liability". Remaining part of the award passed by the Tribunal is confirmed as it is.

27. Deficit Court fees be recovered from the claimant.

28. Parties to bear their respective costs of the appeal. The appeal is disposed of in the above-said terms.

(SUNIL K. KOTWAL, J.)

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