IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1883 OF 2014

Amit Suresh Chavan
Age : 27 years, occu.: nil
R/o Chinchban, Tal. Newasa,
District Ahmednagar. **Appellant**.

Versus

1. Pandurang Laxman Salunke
Age : 50 yrs, occu.: business
R/o 102, Geetanagar, Opposite
Kopolwadi Hall, Malti Sudha
Tower, Ral Sadanand Nagar,
Uttam Road, Bhavnagar West.
District Thane.

2. The New India Assurance Co.Ltd.
Through its Branch Manager,
Akhettar Building, Near Ashoka
Hotel, Kings Road, Ahmednagar. **Respondents**.

***

Mr. P.C. Mayure, Advocate for the appellant.
Mr. Y.K. Bobade, Advocate for respondent No.1.
Mr. A.S. Osmanpurkar, Advocate for respondent No.2.

***

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 26 March 2019.

Judgment pronounced on : 3 April 2019.

JUDGMENT.

. This appeal is directed by the original claimant against judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal") in Motor Accident Claim Petition (M.A.C.P.) No. 203/2006, whereby compensation of Rs. 4,25,000/-, excluding the compensation awarded under "no fault liability", is awarded by the Tribunal.

2. Respondent No.1 is the owner of offending vehicle i.e. Tempo bearing registration No. MH-04-S-5487 and respondent No.2 is the Insurer of this offending vehicle. No cross-objection or cross appeal is filed by the owner or Insurer of the offending vehicle.

3. Heard Mr. Mayure, learned Counsel for the appellant, Mr. Bobade, learned Counsel for respondent No.1 and Mr. A.S. Osmanpurkar, learned Counsel for respondent No.2 / Insurer.

4. As the owner and Insurer of the offending vehicle have not disputed the occurrence of the accident due to rash and negligent driving by the driver of offending tempo as well as quantum of compensation awarded by the Tribunal, the only point which arises for my consideration is, what is the just and reasonable compensation payable to the claimant?

5. Learned Counsel for the appellant / claimant submits that though Dr. Sunil Pokharna (PW-2) has duly proved the permanent disability certificate (Exh.29) and 50% permanent disability sustained by the claimant and his inability to work as a Fitter in future, the learned Tribunal awarded meager compensation of Rs. 4,50,000/- to the claimant. He submits that the Tribunal even did not consider the future loss of income due to injuries sustained by the claimant. He has pointed out that even under the head of pain, suffering and loss of amenities the Tribunal awarded meager compensation. He prays for enhancement of the compensation.

6. Learned Counsel for respondent No.2 / Insurer has drawn my attention towards the evidence of employer of the claimant namely Machindra Pawar (PW-3) and submits that the evidence of this witness is not corroborated by other supporting record maintained by the employer. Therefore, income of the claimant is rightly considered by the Tribunal as Rs. 3,000/- per month.

7. The next contention of learned Counsel for respondent No.2 is that due to facial injuries and permanent

disability sustained by the claimant, his earning capacity is not adversely affected, as he works as a Fitter in the garage. He submits that Dr. Pokharna (PW-2) nowhere deposed regarding the loss of earning capacity of the claimant. Therefore, whatever compensation is awarded by the Tribunal, is appropriate.

8. Though learned Counsel for the appellant has drawn my attention towards the cases **“Dinesh Singh Vs. Bajaj Allianz General Insurance Co. Ltd.” [2015 (2) Mh.L.J. 32], “B.Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd.” [2011 (5) Mh.L.J. 307, “S. Manickam Vs. Metropolitan Transport Corp. Ltd” (2013 AIR SCW 4337), “Subulaxmi Vs. Managing Director, T.S.T. Corpn.” [2013 (2) Mh.L.J. 20], “Sanjay Kumar Vs. Ashok Kumar” (2014 AIR SCW 1236), “Syed Sadiq Vs. United India Ins. Co.” (2014 AIR SCW 724), “Shaikh Farooq Mohammad Gaouse Vs. Transport Manager, Thane Municipal Transport Undertaking” [2013 (5) LJSOFT 50], “Shaikh Parvej Qamar s/o Kamruzama Azmi Vs. M/s. Bajaj Auto Ltd. & ors” [2006 (6) ALL MR 292]** and **“Smt. Parasnni Vs. Shri**

Sube Singh and another" [2012 (3) T.A.C. 397 (P. & H.), however, after going through these cases, it reveals that no straight jacket formula has been laid down by the Apex Court or by this Court for determining compensation in injury claim cases. The compensation is to be determined in every case on the basis of nature of the injury sustained by the claimant, his occupation and loss of his earning capacity.

9. 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).

10. 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.

11. The Apex Court in the case of **"Govind Yadav Vs New India Insurance Co. Ltd." [(2011) 10 SCC 683]** directed that the principles laid down in Arvind Kumar Mishrav Vs. New India Assurance Co. Ltd. And Raj Kumar Vs. Ajay Kumar 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 temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

12. In the case at hand, the claimant Amit Chavan (PW-1) deposed before the Court that on the date of accident he was 24 years old and his date of birth is 24.05.1983. From his evidence it becomes clear that the claimant has acquired

qualification of Diploma in Machine Fitter in the year 2000 and since thereafter he worked as a Fitter in Navshakti Engineering Workshop at Dahigaon, Taluka Kopargaon till the date of occurrence of the accident. This contention is corroborated by the Diploma Certificate (Exh.41) produced on record by the claimant. Thus, it is clear that the claimant is a skilled worker.

13. Claimant Amit (PW-1) has also deposed before the Court that due to the injuries sustained in motor vehicular accident, he cannot walk properly or sit properly. From his evidence it has come on record that left leg of the claimant is shortened and he sustained 50% permanent disability.

14. The contention of claimant Amit (PW-1) about his permanent disability is also corroborated by the evidence of Dr. Sunil Pokharna (PW-2), who initially treated the claimant on 23.03.2006 after occurrence of the accident. From the evidence of Dr. Pokharna (PW-2) it emerges that after obtaining treatment in his hospital on 23.03.2006, the claimant was initially shifted in Sonar Hospital, Ahmednagar due to severe blood loss and facial as well as head injuries. Thereafter on 31.03.2006 again the claimant was admitted in the hospital of Dr. Pokharna (PW-2)

and he was discharged on 16.05.2006. This Medical Officer has given details about the compound fracture and crush injury to the left leg of the claimant as well as fracture of facial bones such as mandible and maxilla. From the evidence of Dr. Pokharna (PW-2) it becomes clear that despite treatment to the claimant, there was mal-union of fracture of bones of the claimant and due to 50% disability the claimant cannot work in motor garage as a Fitter.

15. Dr. Pokharna (PW-2) has also made it clear that due to fracture of facial bones, the claimant has difficulty in chewing and he suffers due to facial nerve palsy. Dr. Pokharna (PW-2) has duly roved permanent disability certificate (Exh.29) and discharge card (Exh.30 and Exh.31) as well as bills (Exhs.26 and 27) received by him from the claimant for treatment. He has also proved bills of pathology charges and O.P.D. Charges (Exhs.28/1 to 28/9). He has made it clear that the claimant purchased medicines as per his prescriptions. Despite searching cross-examination by learned Counsel for the Insurer, nothing could be elicited from his cross-examination to disbelieve his evidence. Because this witness did not maintain the record regarding

advance payment made by the claimant and because he did not issue receipt for advance payment, his evidence regarding payment of bills by claimant cannot be doubted, because he has also made it clear that at the time of discharge, final bills are issued.

16. Thus, on the basis of the evidence of Dr. Pokharna (PW-2), the claimant has proved that after occurrence of the accident he sustained permanent disability resulting into the loss of his earning capacity as a Fitter. Considering the shortening of the leg by claimant and mal-union of fracture of leg bone of the claimant, at least it can be ascertained that earning capacity of the claimant as Fitter is adversely affected to the extent of 50%.

17. So also on the basis of the above-referred bills proved by Dr. Pokharna (PW-2), the claimant has proved the medical expenditure as follows :-

(a)	Hospital Bill (Exh.26)	:-	Rs. 1,45,550/-
(b)	Hospital Bill (Exh.27)	:-	Rs. 65,550/-
(c)	Hospital Bill and Pathology receipts (Exh.28/1 to 28/9)	:-	Rs. 6,000/-

Total :- Rs. 2,17,100/-

The learned Counsel for the respondents has admitted medical bill receipts (Exhs. 39/1 to 39/26) total amounting to Rs. 1,30,396/- (in round figure, Rs. 1,30,400/-).

18. While determining the loss of income during the period of hospitalization and treatment, the age, occupation and income of the claimant play an important role.

19. Age of the claimant on the date of accident was 24 years as per date of birth given by him, which is not disputed by the Insurer. So also, by placing his Diploma certificate the claimant has also proved that he is a skilled labourer, as Fitter. By examining Machindra Pawar (PW-3) the claimant has brought on record evidence to show that he worked in the workshop of Machindra Pawar (PW-3) from June 2004 to 22.03.2006 as a Fitter and the claimant used to earn monthly salary of Rs.4,500/-. Evidence of his witness is disbelieved by the Tribunal for the reason that his testimony is not corroborated by any supporting evidence such as record of servants maintained by workshop owner. However, it cannot be ignored that Machindra Pawar (PW-3) is not a big industrialist or owner of workshop having huge business. Generally owner of small scale industries or workshop do not maintain record of one or two employees

working in the workshop. Because the claimant has not filed appointment order, Machindra Pawar (PW-3) has not obtained licence from Grampanchayat and he did not file supporting document except salary certificate (Exh.38), the evidence of this witness cannot be disbelieved. Otherwise also, being a skilled worker, notional income of the claimant cannot be less than Rs. 4,500/- per month.

20. In the case of "**Jagdish Vs Mohan and others" [(2018) 4 SCC 571]**, notional income of the Carpenter is considered as Rs. 6,000/- per month. Accordingly I hold that the monthly income of the claimant is Rs. 4,500/-. In the case of **Jagdish Vs Mohan** (supra) three Judges' Bench of the Apex Court also held that in view of the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. SC 70]** future loss of income of such person needs to be considered while determining the income of the claimant. In the case at hand, as the claimant was 24 years old, in view of the law laid down in the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi "** (supra), there shall be addition of 40% in the monthly income of the claimant in addition to his monthly salary. Thus,

the monthly income of the claimant comes to Rs. 6,300/-. It follows that his annual income is Rs. 75,600/-.

21. In view of the law laid down by the Apex Court in the case of **"Raj Kumar Vs. Ajay Kumar"** (supra), in injury claim cases, there cannot be deduction of income towards personal expenses of the claimant. Therefore, after considering the law settled by the Apex Court regarding applicability of the proper multiplier on the basis of age of the claimant, in the case at hand, the multiplier of "18" is applicable. Thus, the loss of income of the claimant comes to Rs. 13,60,800/-. However, as observed above, on account of permanent disability sustained by the claimant, his earning capacity is adversely affected to the extent of 50% only. Therefore, the appropriate loss of income of the claimant on account of 50% loss of earning capacity comes to Rs.6,80,400/-. The claimant is entitled to compensation of Rs. 6,80,400/- under the head of future loss of income due to permanent disability.

22. From the evidence of Dr. Pokharna (PW-2) and discharge certificate (Exh.30), it emerges that the claimant was hospitalized for treatment on 31.03.2006 to 16.05.2006 in

Pokharna Hospital. Thus, the claimant was admitted in the hospital of Dr. Pokharna for the period of 47 days and in addition to this, after the accident i.e. on 23.03.2006 he was admitted in Dr. Sonar Intensive Care Unit, Ahmednagar and he was discharged on 31.03.2006 as revealed from certificate (Exh.40) issued by Dr. Sonar Intensive Care Unit. Thus, the total period of hospitalization of the claimant comes to 55 days. During the period of hospitalization of 55 days, the claimant had sustained 100% loss of income. Thus, considering the monthly income of the claimant as Rs. 6,300/-, the loss of income sustained by the claimant during the period of hospitalization comes to Rs. 11,550/-. In other words, the claimant is entitled to compensation of Rs. 11,550/- for the period of hospitalization and treatment.

23. Another important aspect is that, somebody must have attended the claimant when he was admitted in the hospital. Considering the prevailing daily wages of labour in the year 2006, the attendance charges are to be given to the claimant at the rate of Rs. 300/- per day. Thus, for the period of 55 days, the claimant is entitled to attendance charges of Rs. 16,500/-. In addition to this the claimant is also entitled to the charges which

must have been incurred by him for the special diet during the period of hospitalization. Thus, by guess work, the compensation of Rs. 10,000/- is awarded for special diet.

24. It cannot be ignored that after occurrence of the accident initially the claimant was admitted in the hospital of Dr. Pokharna (PW-2) and from there he was shifted to Dr. Sonar Intensive Care Unit and again he was admitted in the hospital of Dr. Pokharna for surgery. Thus, during this period certainly the claimant must have paid charges for hired vehicle which was used for his transportation from one hospital to another as well as from the spot of accident to hospital of Dr. Pokharna. The claimant has filed receipts of ambulance charges at Exh.39/27. From these four receipts, it can be ascertained that the claimant spent an amount of Rs. 1200/- towards transportation charges. Thus, the claimant is entitled to transportation charges of Rs.1200/-.

25. In addition to this, as the claimant sustained fracture injuries to his left leg and facial bones, the damages needs to be awarded under the head pain, suffering and trauma. Considering the nature of the injuries sustained by the claimant

and two surgeries undergone by him in the hospital at Ahmednagar, the compensation of Rs. 25,000/- deserves to be awarded under the head of pain, suffering and trauma.

26. Due to permanently disability the claimant has difficulty in chewing as well as while walking. As the permanent disability resulted into shortening of his left leg, the claimant is bound to limp while walking. So also, due to disability of limping while walking, certainly marriage prospects of the claimant are affected as on the date of accident he was unmarried, which emerges from the petition. Thus, under the head of loss of amenities and loss of prospects of marriage, the claimant is entitled to compensation of Rs. 25,000/-.

27. As Dr. Pokharna (PW-2) did not speak regarding future medical expenditure required by the claimant, no compensation can be awarded under the head of future medical expenses. So also considering the nature of injuries sustained by claimant, compensation needs not be awarded under the head of loss of expectation of life (shortening of normal longevity).

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

1)	Loss of future income	:-	Rs. 6,80,400/-
2)	Medical expenses	:-	Rs. 3,47,500/-
3)	Loss of income during the period of hospitalization	:-	Rs. 11,550/-
4)	Attendance charges	:-	Rs. 16,500/-
5)	Special Diet	:-	Rs. 10,000/-
6)	Transportation charges	:-	Rs. 1,200/-
7)	Pain, suffering and trauma	:-	Rs. 25,000/-
8)	Loss of amenities and loss of prospects of marriage	:-	Rs. 25,000/-
	Total	:-	Rs. 11,17,150/-

(Rupees Eleven Lakh Seventeen Thousand One Hundred and Fifty)

29. The amount of compensation is inclusive of the amount awarded under head "no fault liability". The claimant is also entitled to interest on the above-mentioned compensation amount at the rate of Rs. 9 % per annum from the date of filing of petition till realization of entire amount.

30. In view of the above discussion, the appeal deserves to be allowed and compensation awarded by the Tribunal needs to be enhanced as above.

31. In the result, First Appeal No. 1883 of 2014 is allowed. The award passed by Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No. 203/2006 is modified to enhance the compensation payable to the claimant to the extent of

Rs.11,17,150/- (Rupees Eleven Lakh Seventeen Thousand One Hundred and Fifty). The claimant is also entitled to interest at the rate of Rs. 9 % per annum from the date of filing of petition till realization of the entire amount.

32. The other directions given by Tribunal regarding the mode of payment by account payee cheque through the Tribunal, are confirmed.

33. Award be modified in the above-said terms.

34. If any compensation amount is deposited by Insurance Company in the appeal, the same be paid to the claimant through Tribunal. Thus, the deposited amount be remitted to the Tribunal, Ahmednagar for its disbursement in accordance with modified award.

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

36. The parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/