

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

FIRST APPEAL NO. 685 OF 2006

Bhaga Anand Shelke
Age : 42 years, occu.: Nil,
R/o Kuran Road, Sangamner,
Taluka Sangamner,
District Ahmednagar.

Appellant.

Versus

1. M/s Gaurav Associates,
1, Barsam Apartments,
Ashok Nagar, Pune.
2. The Divisional Manager,
United India Insurance Co. Ltd.,
Kisan Kranti, Market Yard,
Ahmednagar.

Respondents

Mr. R.P. Phatke, Advocate for the appellant.
Mr. A.B. Gatne, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 6 June 2019.

Judgment pronounced on : 11 June 2019.

J U D G M E N T :

This appeal is filed by original claimant in in Motor Accident Claim Petition (M.A.C.P.) No.602 OF 2002 (old M.A.C.P. No.271 f 2001) against judgment and award passed by Motor Accident Claims Tribunal (hereinafter referred to as "Tribunal"),

Sangamner, whereby compensation of Rs. 2,25,000/- was awarded by the Tribunal. Respondent No.1 is the owner of offending truck bearing registration No. MH-12-F-5172 and respondent No.2 is the Insurer of the offending vehicle.

2. The facts leading to institution of this appeal are that on 02.02.2001 when the claimant was riding his motorcycle from Sangamner towards Chondegaon, at Rayatwadi Phata, the offending truck came from opposite direction and gave dash to the motorcycle of the claimant resulting into grievous injuries to the claimant. As the accident occurred due to rash and negligent driving of the driver of offending truck, the claimant filed claim petition under Section 166 of the Motor Vehicles Act for compensation.

3. Only opponent No.2 / Insurer resisted the claim by filing written statement (Exh.13) denying occurrence of the accident due to rash and negligent driving of the driver of offending truck. Statutory defence was also raised by the Insurer of the offending vehicle regarding non-holding of valid and effective driving licence by driver of offending vehicle.

4. After considering the evidence placed on record by parties, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of offending truck resulting into permanent disability of the claimant. The Tribunal also held that the Insurer of the offending vehicle failed to prove breach of condition of policy of insurance. In the result, compensation of Rs. 2,25,000/- was awarded with interest thereon at the rate of Rs. 6% per annum from the date of petition and joint and several liability was fastened against respondent Nos.1 and 2. That award is challenged by the claimant for enhancement of compensation.

5. As no cross-objection or cross appeal is filed by the Insurer of the offending vehicle, the only point for consideration is what would be fair and reasonable compensation payable to the claimant.

6. Heard Mr. R.P. Phatke, learned Counsel for the appellant (claimant) and Mr. A.B. Gatne, learned Counsel for respondent No.2 (Insurer).

7. Learned Counsel for the appellant submits that on account of permanent disability sustained by the claimant due to accidental injuries, the services of the claimant as Agricultural Assistant were terminated, resulting into future loss of income of the claimant. He submits that in view of the law settled by Larger Bench of the Apex Court 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 at the time of accident, there should have been addition of 50% in the monthly income of the claimant while determining future loss of prospects due to accidental injuries.

8. The next contention of learned Counsel for the appellant is that the interest awarded by the Tribunal is at meager rate and it be enhanced. He submits that even under different heads, the Tribunal awarded less compensation which needs to be enhanced. He placed reliance on the cases of **“Basappa Sanganasappa Bahvikatti Vs. T. Ramesh TangaVelu and another” [2015 (2) Mh.L.J. 663]** and **“Danzil Oscar S. Dias Vs. Jose J. Coutinho and others” [2005 (2)**

ALL MR 254].

9. Learned Counsel for respondent No.2 (Insurer of the offending vehicle) opposes the enhancement of compensation on the ground that the claimant voluntarily obtained retirement and he cannot establish the link in between accidental injuries and his voluntary retirement on medical ground. He submits that as after retirement the claimant is getting pension in accordance with rules, there cannot be any enhancement in the compensation under the head of loss of future prospects. He has also pointed out that in the case at hand the doctor, who treated the claimant after occurrence of the accident for his fracture injuries, is not examined by the claimant. He submits that Dr. More (PW-2) issued permanent disability certificate without carrying out radiological test of the claimant.

10. Contention of the learned Counsel for Insurer is that the Tribunal awarded just and reasonable compensation which is certainly excess than claimed by the claimant.

11. With the help of learned Counsel for both the parties, I have gone through the relevant paragraphs of the judgment and

award passed by the Tribunal as well as evidence placed on record by the claimant. The backbone of the contention of appellant is that due to permanent disability sustained by claimant, his government job was terminated, and therefore, in view of the law settled by the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi”** (supra), there shall be addition of 50% in the monthly income of the claimant. However, after going through the record and proceeding, specially through the deposition of claimant Bhaga Shelke (PW-1), it emerges that he claims that though his services were terminated on account of permanent disability sustained as a result of accidental injuries, the document (Exh.53) placed on record proved by Pandurang Bhojne (PW-3), who is the employee of Soil Conservation Office, Sangamner shows that the services of the claimant were not terminated or he was not dismissed from the service, but the claimant obtained retirement from the Government service as he was declared medically unfit. Even pensionary benefits were awarded to the claimant. Claimant Bhaga Shelke (PW-1) has admitted in his evidence regarding receipt of monthly pension at the rate of Rs. 3,256/-. Thus,

obviously the claimant did not suffer 100 % loss of income on account of his retirement from the service.

12. Another important aspect is that though by examination of Dr. More (PW-2) claimant has proved permanent disability certificate (Exh.44), from the cross-examination of this witness, it emerges that this Medical Officer never treated the claimant for his accidental injuries, and issued permanent disability certificate even without conducting radiological test of the claimant. In absence of radiological test, Dr. More (PW-2) cannot prove any fracture injury alleged to be sustained by claimant on account of motor vehicular accident. So also, taking into consideration the conflicting permanent disability certificates issues by Dr. More (PW-2) and Dr. Ghorpade regarding percentage of permanent disability, the Tribunal rightly doubted reliability of permanent disability certificate (Exh.44) issued by Dr. More (PW-2). So also, it cannot be ignored that from the cross-examination of claimant Bhaga Shelke (PW-1), it emerges that Dr. Kakathkar, who in fact treated the claimant after occurrence of the accident, refused to issue permanent disability certificate. In the circumstances, the

evidence placed on record by claimant regarding his permanent disability is apparently not reliable.

13. In the case of **“Basappa Sanganasappa Bahvikatti Vs. T. Ramesh TangaVelu”** even the Apex Court has considered the law settled by Apex Court in the landmark judgment 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).

14. 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.

15. Thus, in view of this settled law, I do not find any illegality in the observation of the Tribunal while doubting the correctness of permanent disability certificate. So also from the evidence of claimant Bhaga Shelke (PW-1) it emerges that even after occurrence of the accident and discharge from the hospital the claimant continued his job as Agricultural Assistant for reasonable period of 13 months. Thus, obviously there was no loss of earning capacity of the claimant. The most important aspect is that though the claimant obtained retirement on medical ground, the certificate issued by Medical Board declaring the claimant unfit for Government service, is neither placed on record nor proved by the claimant. Thus, the link in between accidental injuries sustained by claimant and his retirement on medical ground, is totally missing. In the circumstances, by no stretch of imagination it can be held that on account of accidental injuries sustained by claimant, he was compulsorily made to retire and thereby he sustained future loss of income. However, the learned Tribunal is kind enough to award compensation of Rs. 25,000/- towards future loss of income. I do not find any reason to enhance the same amount.

16. As the Medical Officer, who treated the claimant after sustaining accidental injury, is not examined, the claimant cannot prove that the medical bills filed by him were of the medicines prescribed by Dr. Kakathkar, who treated him. Even then the Tribunal is kind enough to award compensation of Rs. 1,00,000/- towards medical expenses, medicines and hospitalization. I do not find any reason to enhance compensation under the head of medical expenses.

17. Even the compensation awarded under the head of attendance and special diet as well as traveling expenses is reasonable and the Tribunal has assigned appropriate reasons for awarding such compensation. Therefore, under those heads compensation cannot be enhanced. Under the head of loss of leave the Tribunal has already awarded compensation of Rs. 60,000/- which needs no interference.

18. However, under the head of loss of amenities and enjoyment of life the Tribunal awarded compensation of Rs.10,000/- only. Even under the head of pain and suffering the Tribunal awarded compensation of Rs. 10,000/-. It cannot be

ignored that as a result of accidental injuries the right leg of the claimant is shortened by one inch. Therefore, obviously after the accidental injuries the claimant would be limping for his entire life. Considering the middle age of the claimant, limping for the entire life amounts to great hardship and loss of enjoyment of life. Therefore, under the head of loss of amenities and enjoyment of life, the compensation needs to be enhanced to the extent of Rs. 50,000/-. So also, considering the nature of fracture injuries sustained by claimant and long period of treatment in the hospital of Dr. Kakathkar, under the head of pain and suffering, compensation of Rs. 50,000/- needs to be awarded.

19. So also, on the compensation amount payable to the claimant, he is entitled to interest at the rate of Rs. 9% per annum from the date of filing of petition till realization of entire amount. It follows that this appeal deserves to be partly allowed to enhance the compensation to the tune of Rs. 3,05,000/-.

20. In the result, First Appeal No.685 of 2006 is partly allowed. The compensation payable to the claimant is enhanced to the tune of Rs. 3,05,000/- with interest thereon at the rate of

Rs. 9 % per annum from the date of petition till realization of entire compensation amount.

21. The award be modified accordingly.

22. Appeal is disposed of in above-said terms. Parties to bear their respective costs.

23. Pending Civil Application is disposed of.

(SUNIL K. KOTWAL, J.)

vdd/