

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1891 OF 2018

Baban Manik Gite,
Age 52 yrs., Occ. Agri.,
R/o Gitewadi, Post Dadegaon,
Tq. Ashti, Dist. Beed.

... Appellant.

... Versus ...

- 1 Divisional Controller,
Maharashtra State Road Transport
Corporation, Beed, Dist. Beed.
- 2 Dhananjay Shivaji Kalkutaki,
Age – major, Occ. Driver,
R/o Maharashtra State Road
Transport Corporation, Kolhapur,
Dist. Kolhapur.

... Respondents.

...

Mr. S.B. Choudhari, Advocate for the appellant

Mr. S.R. Bagal, Advocate for the respondent No.1

Mrs. N.K. Helkute, Advocate for the respondent No.2 - **absent**

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 05th SEPTEMBER, 2019

PRONOUNCED ON : 15th OCTOBER, 2019

JUDGMENT :

1 Present appeal has been filed by original claimant for enhancement of compensation granted by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

2 The present appellant-claimant had filed M.A.C.P No.179/2016 before Motor Accident Claims Tribunal at Beed for getting compensation, which came to be decided partly in his favour on 12.03.2018.

3 The claimant had come with a case that he is aged 50 and was doing agriculture as well as getting income as Mukadam. He was returning by S.T. Bus bearing No.MH 24/BT-3552 from Kolhapur to Bhagwangadh, after completing his work on 20.07.2015 with Sugar Factory at Baramati. At about 2.30 p.m. the S.T. Bus reached near the bridge, on Bhima river, on Baramati-Karjat road, near village Khed. The S.T. Bus driver i.e. respondent No.2 was driving the said bus in high speed, rashly and negligently. He lost control over it and suddenly went into a ditch. Claimant received the severe injuries to his head, ribs etc.. Claimant was admitted to Hospital at Karjat and then shifted to City Care Hospital, Ahmednagar, where he had taken treatment from 20.07.2015 to 26.07.2015. He was thereafter, shifted to Sahyadri Hospital, Pune till 05.09.2015. The offence has been registered

against respondent No.2. It has been contended by the claimant, that by working as Mukadam with Chhatrapati Co-operative Sugar Factory, Bhawani Nagar, Tq. Indapur, Dist. Pune, he is getting income of Rs.5,00,000/- per annum in the season. He is having 5 acres irrigated land at village and getting income of Rs.1,50,000/- per annum. So also he is doing business in bullock carts, which is giving him additional income of Rs.50,000/- per month. It is stated, that though he has been treated, the accidental injuries have now turned into 50% permanent disability to him. He cannot do work as before. He, therefore, claimed compensation of Rs.56,00,088/- and restricted the same to Rs.50,00,000/-. The said S.T. Bus was owned and controlled by respondent No.1 and therefore, the amount of compensation has been claimed from both the respondents, jointly and severally.

4 Respondent Nos.1 and 2 have given their common written statement. They have admitted that such accident had taken place and respondent No.2 has been prosecuted by police. However, it was tried to be contended that there were many ditches on the road. Though the speed of the bus was slow, it got jerk from one of the ditch, as a result of which, the claimant received injuries. It is stated that no other passenger had received any injury, which shows that the claimant was at fault, as he was sitting on the extreme back side of the bus.

5 After issues were framed, claimant has led oral as well as documentary evidence. No evidence was led by the respondents. Taking into consideration the evidence on record and after hearing both sides, the learned Tribunal has come to the conclusion that the accident took place due to the sole negligence on the part of the respondent No.2 and he is entitled to get compensation of Rs.4,23,110/-. Being dissatisfied with the quantum awarded by the Tribunal the claimant has filed present appeal.

6 Respondents have not filed any appeal and therefore, scope of this appeal is very much limited, to the extent of quantum only. Hence, following point arise for determination; findings and reasons for the same are as follows.

Whether the Tribunal has awarded just and fair compensation to the claimant ?

REASONS

7 Heard learned Advocate Mr. S.B. Choudhari for appellant and learned Advocate Mr. S.R. Bagal for respondent No.1. Learned Advocate for respondent No.2 Mr. N.K. Helkute was absent, when the matter was heard.

8 It has been submitted on behalf of the appellant that the age of

the claimant has been taken wrongly by the Tribunal as 68 years. No doubt, he has not produced documentary evidence, but some of the document, which claimant filed, showed his age as 60 and therefore, the multiplier has ought to have received as “9”, in view of the decision in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**. Further, the learned Tribunal failed to consider that the claimant has adduced evidence and proved that he has suffered 50% permanent physical disability. The learned Tribunal has wrongly taken it at 40% and the loss has been calculated with 30%, which is wholly unjustified. The amount of income has also been wrongly taken. The evidence was adduced to the extent of the fact, that claimant was getting commission of six months. Thereafter, at least notional income for his other sources of income ought to have been added. Claimant has stated that he has 5 acres of irrigated land, which was giving him additional income, so also, by selling milk he is getting further income. Therefore, whatever amount, that has been granted by the learned Tribunal, cannot be said to be adequate.

9 Per contra, the learned Advocate appearing for the respondent No.1 has submitted that the age of the claimant is 65 years. The First Information Report was lodged by his son, in which, he says that his father is 65. Under such circumstance, other documents cannot be taken into

consideration. Multiplier, that has been used by the Tribunal, is correct. Disability has also been properly considered and the income also. The evidence shows that claimant got commission for six months only and for rest of the six months i.e. the off season, it is stated, that his income would be equivalent to the notional income. Therefore, there is absolutely no necessity to interfere with the Judgment and Award.

10 It is to be noted, that though claimant had contended that he was getting amount of Rs.5,00,000/- per year from commission, the evidence which he adduced in the form of examining CW 3 Ramchandra Pawar, would show that for the year 2014-15 he got commission of Rs.91,919/- (Exh.37). That means, for the season which would have lasted for about six months, he got that much amount and for rest of the year, his income will have to be assessed from other sources. Claimant has not produced on record his 7/12 extract, so also, he did not lead any evidence to prove the additional income by selling milk. Therefore, there was no option for the Tribunal to invoke the notional income theory. However, it is to be noted that the notional income has to be taken by the Tribunal @ Rs.3,000/- per month. The learned Tribunal has failed to consider that the accident had taken place in the year 2015, and therefore, the notional income ought to have been taken @ Rs.6,000/- per month. For the said off season his income would be

Rs.36,000/- (Rs.6,000/- per month x 6 months) and his income for the season would be Rs.91,919/-. Thus, his yearly income would be Rs.1,27,919/-, which is rounded up to Rs.1,27,920/-.

11 Though the claimant filed the claim stating that his age is 50, yet, his documentary evidence was not supporting his said contention. The First Information Report is lodged by his son, wherein he has clearly stated that age of his father is 65. No doubt, MLC shows his age as 60, yet, no other authentic document in respect of his age has been produced. Again, the documentary evidence in the form of medical bill of City Care Hospital shows that his age on the date of admission with that hospital was 65. With the subsequent hospital at Pune his age has been given as 53. So, as per the convenience, it appears that the claimant has changed his age. We are required to consider the immediate disclosure about his age, that too by his son. Hence, his age is taken as 65 at the time of accident, and therefore, multiplier of “7” is required to be invoked here.

12 Now, it is to be noted that as per the evidence of the Doctor, who issued disability certificate, claimant has sustained 50% of the permanent physical disability. However, the testimony of CW 2 Dr. Kisan Golhar would show that he has not explained, as to whether that percentage of disability is restricted to a particular limit or not. But when he says, that the patient was

having partial neck stiffness with quadriparesis due to trauma, then that disability is restricted to particular limb only. CW 2 Dr. Kisan had not treated the claimant. The disability has been assessed by this Doctor on the basis of disclosures about the pain and some clinical tests made by him. But then he had not taken MRI or X-rays of the claimant, at the time of issuing disability certificate. In his cross-examination the concerned Doctor has also stated that the disability chart can be flexible up to 5 to 10%. That means, there was such evidence before the learned Tribunal, that it could not have accepted entire disability certificate as it is. When the disability was restricted to particular limb, its consequence on the entire body has to be considered by the Tribunal, while assessing the quantum. Therefore, the learned tribunal was justified in taking permanent disability at 40%. However, the further reduction by the learned Tribunal to 30% in earning capacity appears to be not correct. The said disability will have to be then correlated to the earning capacity and therefore, the learned Tribunal ought to have calculated the compensation with 40% financial loss. 40% of Rs.1,27,920/- come to Rs.51,167.60/-. It is rounded up to Rs.51,170/-. Applying the multiplier as “7”, as aforesaid, the total loss of income for the claimant would be Rs.3,58,190/-.

awarded by the Tribunal are to the extent of Rs.1,18,778/-. That amount is rounded up to Rs.1,18,780/-.

14 Taking into consideration the duration of hospitalization of the claimant, it can be said that for four months he could not earn anything and therefore, his loss during that period would be Rs.42,640/- (Rs.1,27,920/- ÷ 12 months x 4 months).

15 Taking into consideration the duration of his treatment at Ahmednagar and Pune and the fact that he is from Gitewadi, Post Dadegaon, Tq. Ashti, Dist. Beed, amount of Rs.20,000/- is awarded towards transportation and attendance. Further amount of Rs.10,000/- is granted towards special diet. Further, taking into consideration the injury as well as disability suffered, Rs.50,000/- is awarded towards pains and sufferings and Rs.50,000/- towards permanent disability. Thus, the claimant is entitled to get Rs.6,49,610/-. The amount, which has been awarded by the learned Tribunal, is on the lesser side. When the Tribunal is bound to give just compensation, the said amount of compensation needs to be enhanced. However, it is to be stated that the amount, that has claimed by the claimant, is very much on the higher side. Therefore, he is not entitled to get that much amount of compensation. Point is, therefore, answered accordingly and following order is passed.

ORDER

- 1 Appeal is hereby partly allowed.
- 2 The Judgment and Award passed in M.A.C.P. No.179/2016 dated 12.03.2018 by learned Ad-hoc District Judge-1 and Member, Motor Accident Claims Tribunal, Beed, is hereby set side and modified to the extent of quantum only, as follows.
- “Respondent Nos.1 and 2, jointly and severally, do pay amount of Rs.6,49,610/- (Rupees Six Lacs Forty Nine Thousands Six Hundred and Ten only) (inclusive of amount under No Fault Liability) to the claimant with interest @ 8% per annum from the date of institution of the petition i.e. 15.07.2016 till the actual realization of the entire amount.”
- 3 The amount deposited, if any, by the respondents towards the Judgment and Award passed by the learned Tribunal, be adjusted towards this modified Award.
- 4 No order as to costs on appeal.

(Smt. Vibha Kankanwadi, J.)