

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

FIRST APPEAL NO.600 OF 2013

Supdu Sardar Tadvi,
Age 50 yrs., Occ. Nil,
R/o Tadavi Wada, Hari Vitthal Nagar,
Jalgaon.

... **Appellant.**

... **Versus** ...

- 1 The New India Insurance Company Ltd.,
 Through The Divisional Manager,
 Mandore Market, Dhadiwala Bungalow,
 Mehrun Road, Jillha Peth, Jalgaon.
- 2 Dileep Shantaram Baviskar,
 Age 40 yrs., Occ. Transport Business,
 R/o Kurhe Panache, Tq. Busawal,
 Dist. Jalgaon.

... **Respondents.**

...

Mr. M.M. Bhokarikar, Advocate for the appellant

Mr. A.G. Kanade, Advocate for the respondent No.1

Mr. B.K. Patil, Advocate for the respondent No.2 - **absent**

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th SEPTEMBER, 2019

PRONOUNCED ON : 22nd OCTOBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimant for the enhancement in the compensation granted by the learned Ex-Officio Member, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.425/2004 dated 24.11.2011.

2 The present appellant had filed said application under Section 166 of the Motor Vehicles Act, 1988 for getting compensation on account of the injuries sustained by him in vehicular accident. The claimant had come with a case that he was proceeding on motorcycle bearing No.MH 19/D-1088 from Bhusawal to Jalgaon on 02.05.2004. He reached on the highway near one Marble shop at about 7.00 p.m., at that time one passenger jeep bearing No.MH 19/J-1785 came rashly and negligently and gave dash to the motorcycle driven by claimant, as a result of which he sustained injuries. He was admitted to hospital of one Dr. Jadhav. He had undergone two operations and thereafter he has taken treatment from Dr. Lathi. He has also taken treatment from K.E.M. Hospital, Mumbai and J.J. Hospital, Mumbai. However, he has sustained permanent physical disability. He is unable to work as before. He was aged 48 at the time of accident and was working as a driver in a private company, earning Rs.5,500/- per month. It is contended that the said accident took place due to the rashness and negligent driving on

the part of the driver of the jeep, which was owned by respondent No.2 and it was insured with respondent No.1. Compensation has been claimed from both the respondents, jointly and severally.

3 Respondent Nos.1 and 2 resisted the claim by filing separate written statement. It has been contended that the petition is not maintainable for non joinder of necessary parties as a owner, insurer of the motorcycle have not been made as a party. Both of them have admitted that the jeep owned by respondent No.2 was insured with respondent No.1. However, the allegations regarding negligence in driving, on the part of the jeep driver, have been denied specifically. The insurance company has taken statutory defence.

4 Taking into consideration the rival contentions, issues were framed. It appears that only the claimant had led oral as well as documentary evidence. Taking into consideration the evidence on record the learned Tribunal has come to the conclusion that claimant had sustained injuries in the said accident, which was caused due to the negligence on the part of the jeep driver. It was held that there is no breach of terms of policy and therefore, both the respondents were liable to pay compensation to the claimant. Both the respondents have been directed to pay compensation of Rs.5,70,000/- together with interest @ 7.5% per annum from the date of the

petition till actual realization of the entire amount. Being aggrieved by the said amount granted by the learned Tribunal, the claimant has filed the present appeal for enhancement. The enhancement claimed by him is to the tune of Rs.17,86,000/-.

5 Heard learned Advocate Mr. M.M. Bhokarikar for the appellant and learned Advocate Mr. A.G. Kanade for respondent No.1-insurance company. Learned Advocate Mr. B.K. Patil for respondent No.2 was absent, when the matter was heard finally.

6 It has been vehemently submitted on behalf of the appellant that the learned Tribunal failed to consider that though the disability certificate shows, that the claimant sustained permanent disability to the extent of 75%, yet, from the testimony of CW 3 Dr. Sachin Ahire, it can be seen that claimant was even unable to stand and he has no power in his both legs. In clear terms, he has stated, that the claimant cannot drive any vehicle. The occupation of the claimant was driver and therefore, it ought to have been held by the learned Tribunal that there is total loss of income for the claimant. The claimant has in fact, examined the employee of the employer to prove income of the claimant as well as he has categorically stated that after the accident the claimant is no longer in their service. Still the learned Member observed, that he can do some work, though he may not drive the

vehicle and then went on to calculate the compensation, to the extent of 75 % only. This is perversity, so also, the non-pecuniary damages have not been awarded. The learned Tribunal also did not consider future loss of income, when in fact, he ought to have granted 50% towards future loss of income.

Reliance has been placed on the decision in **Jagdish vs. Mohan and others, AIR 2018 Supreme Court 1347**, wherein, for a skilled carpenter, who lost both his hands in accident, future prospects were granted and the total compensation, which was awarded by the Hon'ble Supreme Court, was to the extent of Rs.25,38,308/-.

Further reliance has been placed on the decision in **Parminder Singh vs. New India Assurance Co. Ltd. and others, AIR 2019 Supreme Court, 3128**, wherein, 50% of the income was granted towards future prospects.

7 Learned Advocate appearing for the respondent No.1 submitted that though the disability certificate Exh.34 has been produced by the claimant, yet, the author of the said certificate was not examined. CW 3 Dr. Sachin Ahire was not the signatory to said certificate Exh.34. He was only acquainted with the signatures of those Doctors, who had signed Exh.34. In his cross-examination, he has specifically stated that he has no knowledge

about Exh.34. In view of the decision in Rajesh Kumar alias Raju vs. Yudhvair Singh and another, 2008 B.C.I. 226 (Supreme Court), it was necessary for the claimant to examine the author of the said certificate. In absence of the same, the said certificate cannot be considered at all. Yet, that certificate was considered by the learned Tribunal and the compensation has been made on the basis of 75% of the disability, which cannot be disturbed.

8 At the outset, it can be said that the original respondents have not challenged any other findings given by the learned Tribunal and therefore, we need not go into the point of negligence and even to the extent that claimant has suffered permanent physical disability. The scope of the present appeal is limited to the extent of quantum, which the claimant says that whatever has been awarded by the Tribunal is not just as compared to the evidence led by him. Therefore, following point arise for determination; findings and reasons for the same are as follows.

- 1 Whether the learned Tribunal was justified in awarding compensation of Rs.5,70,000/- to the claimant ?

If no, then what should be the just compensation ?

R E A S O N S

9 The testimony of CW 1 Supdu would show, that he has sustained

disability to his spinal cord and therefore, he is even unable to stand. The claimant has produced on record the injury certificates and other medical papers, which support his contention. As regards the testimony of CW 3 Dr. Sachin Ahire is concerned, it is to be noted that he says that he was working with Civil Hospital, Jalgaon since 31.05.2008, but then the certificate Exh.34 was issued prior to that i.e. on 11.02.2005. It appears that Dr. Shilwant, who had given that certificate was not working with the Civil Hospital, Jalgaon, then, and therefore, the summons was issued in the name of medical officer and then Dr. Ahire was examined. In cross, Dr. Ahire says that Dr. Shilwant is in Government service and he can appear in the Court, if called. No doubt, it would have been proper, in view of **Rajesh Kumar's** case to examine Dr. Shilwant and therefore, in fact, learned Tribunal ought to have issued summons to him, but it was not extracted, as to where Dr. Shilwant was serving, so that the summons can be issued to him. Though Dr. Ahire says that he has no personal knowledge about Exh.34, yet, it can be seen that he has given the account of the injuries sustained by the claimant, on the basis of the medical papers, and therefore, he says that there was no power in the legs of the claimant and he cannot drive the vehicle. There is no reason to disbelieve the testimony of Dr. Ahire. Only on the said point, it will not be appropriate for this Court to remand the matter since the petition was filed in the year 2004 and then it was decided in 2011. The essential evidence was

produced by the claimant. Further, it appears, that when the certificate Exh.34 was exhibited, no objection was raised by the insurance company. Another fact also to be noted is, that the said certificate has been issued by the Board constituted by the Government and it is as per Rule 255(I)(iii), 281 (1)(iv) of the Motor Vehicles Act. Therefore, in view of the fact that it has been given by Government officer, it has authenticity and therefore, there is no reason to disbelieve the said certificate.

10 The fact is required to be seen from another angle also. When the learned Tribunal accepted the said certificate and calculated the compensation by holding that the claimant has sustained 75 % permanent disability; the same has not been challenged by the insurance company. Now, merely because the claimant is challenging the quantum, the insurance company cannot challenge the certificate itself, by raising question on the testimony of CW 3 Dr. Ahire. The insurance company cannot be given advantage of the non-examination of the author of Exh.34, now at the stage of first appeal. Under such circumstance, when it had not raised any objection, when it was exhibited, so also, the same has not been challenged by way of appeal; the insurance company has no right to raise question on the admissibility of said document.

11 Now, it is required to be seen, that whether that 75% permanent

physical disability has turned into 100% financial disability for the claimant. The claimant has deposed, that he was serving as driver with ARCO Transport, Jalgaon. Claimant has examined CW 2 Sandip Bhole, who was serving as Account In-charge-cum-Manager, to prove his income as well as fact, that he was serving as driver. When claimant was serving as driver and now he even cannot stand and unable to drive the vehicle, it ought to have been held by the learned Tribunal, that there is 100% financial loss to the claimant. The statement, “that still claimant can do some work”, made by learned Member in the Judgment, was in fact uncalled for. In catena of Judgments of this Court as well as the Judgments of Apex Court, it has been held, that if the claimant is unable to do the work as before and leads evidence to that effect satisfactorily, then the Tribunal may consider that he has sustained 100% financial disability. Merely by saying that he can do some work, his entitlement to the compensation cannot be reduced. Therefore, now it is held that the permanent physical disability of the claimant has incapacitated him from earning anything.

12 Now, as regards the income is concerned, CW 2 Sandip Bhole has stated that claimant was earning Rs.5,500/-. He has also produced certificate and the chart showing how much amount was paid in a year to the claimant. Learned Member has unnecessarily reduced it to Rs.4,000/- only, on the

ground, that it was inclusive of bhatta. Cross-examination conducted on behalf of the insurance company of this witness does not show, that it was extracted from him, that the amount of Rs.5,500/- was exclusive of bhatta. Therefore, the calculation is required to be made by taking the base as Rs.5,500/- per month. Claimant was aged 48 and it has come through CW 2 Sandip Bhole, that he was the permanent employee. Therefore, in view of **National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680** para No.64 (III), 30% of the said income is required to be added towards future prospect. That amount comes to Rs.1,650/- (30% of Rs.5,500/-). The total would be Rs.7,150/- (Rs.5,500/- per month + Rs.1,650/- per month). Yearly it would be Rs.85,800/- (Rs.7,150/- x 12 months). Further, taking into consideration the age of the claimant, at the time of accident as 48 and in view of the decision in **Pranay Sethi** as well as in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the just multiplier would be “13”. Therefore, the future loss of income for the claimant would be Rs.11,15,400/- (Rs.85,800/- x 13).

13 Further, taking into consideration the fact that a long treatment was required to be taken by the claimant, wherein, he has undergone at least more than two operations, amount of Rs.1,50,000/- is to be awarded towards pain and sufferings. Further, amount of Rs.2,00,000/- is awarded towards

permanent disability plus loss of amenities of life, since he would be almost crippled throughout the life. The learned Tribunal has stated that the medical bills ought to have been produced on record rather to be Rs.51,427/- and further amount of Rs.10,000/- to be awarded towards charges of blood and others. Though that amount is kept intact and further amount of Rs.50,000/- is towards attendance charges, special diet and transportation, the claimant-appellant is entitled to get compensation of Rs.15,76,827/-, which is rounded up to Rs.15,76,830/-. The enhancement claimed by the appellant in the appeal memo is on higher side. Under such circumstance, the appeal deserves to be partly allowed. Hence, following order.

ORDER

- 1 Appeal is hereby partly allowed.
- 2 The Judgment and Award passed in M.A.C.P. No.425/2004 by learned Member, Motor Accident Claims Tribunal, Jalgaon on 24.11.2011 is hereby set aside, to the extent of quantum only, and modified as follows :

“Respondent Nos.1 and 2 do pay, jointly and severally, a sum of Rs.15,76,830/- (Rupees Fifteen Lac Seventy Six Thousand Eight Hundred and Thirty only) (inclusive of amount under No Fault Liability), with interest thereon @ 7.5% per annum from the date of the petition till actual realization of the amount.”

3 The amount deposited uptill now towards said Award, be
adjusted towards modified award.

4 Under such circumstance, no order as to costs.

(Smt. Vibha Kankanwadi, J.)

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