

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 930 OF 2011

Rajendra S/o Maruti Pawar,
Age : 32 Years, Occu. : Nil,
R/o Killari, Tq. Ausa,
Latur.

...Appellant
(Orig. Claimant)

Versus

1. Vikas S/o Pandurang Hogale,
Age : 26 Years, Occu. : Driver,
R/o Sangvi (J), Tq. Nilanga,
District Latur.
(Driver of vehicle No. MH-24/A-2831)
2. Sharad S/o Annarao Pawar,
Age : Major, Occu. : Business & Agril.,
R/o Talni, Tq. Ausa, Dist. Latur.
(Owner of vehicle No. MH-24/A-2831)
3. Tatyrao S/o Ratan Rathod,
Age : 23 Years, Occu. : Driver,
R/o Shirsal, Tq. Ausa, Dist. Latur.
(Owner of vehicle No. MH-24/F-3235)
4. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch Office, Lokhande Building,
Opposite Sindh Talkies, Chainsukh Road,
Latur, Tq. & Dist. Latur.
... Respondents
(Orig. Respondents)

Mr. S.S. Manale, Advocate for Appellant
Mr. Dhananjay Deshpande, Advocate for Respondent No. 4

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 11th JULY, 2019

PRONOUNCED ON : 29th JULY, 2019

JUDGMENT :

1. Present Appellant had filed claim petition for getting compensation under section 166 of the Motor Vehicles Act, 1988 bearing Motor Accident Claims Petition No. 28/2008 before the Ex-Officio Member, Motor Accident Claims Tribunal, Latur. The said petition was partly allowed with proportionate cost. It was held that the original respondents No. 1 and 2 are liable to pay compensation to the extent of 20 % and the respondents No. 3 and 4 were held to pay 80 % of the total amount of compensation i.e. Rs. 3,13,000/-. The present Appeal has been filed by the original claimant for enhancement.

2. The factual matrix leading to the Appeal are that the Appellant/Original Claimant was 30 year old tailor, carrying on his business under the name and style “ Raj Tailors” and was earning Rs. 5,000/- per month. He was travelling in a jeep bearing registration No. MH 24/F 3235 on 22.06.2007 from Lamjana to Killari. Respondent No. 3 was driving the said jeep in a rash and negligent manner. When it reached near Mogarga Pati, a Tempo bearing No. MH 24/A-2831 driven by respondent No. 1 came in

opposition direction in a rash and negligent manner. Both the drivers had lost control and collided with each other, as result of which the claimant sustained grievous injury. He was initially taken to Rural Hospital, Killari and then shifted to another hospital at Latur. Though he has taken treatment, yet, his injuries have turned into permanent physical disability for him and he cannot do any kind of work now. Therefore, compensation was claimed from respondents No. 1 to 4. Respondent No. 4 was the Insurance Company of Tempo.

3. Respondent No. 1 filed written statement, so also, the other respondents also filed their separate written statements. All of them have denied the averments in respect of the negligence. Respondent No. 1 contended that the accident took place due to the negligence on the part of respondent No. 3, whereas respondent No. 3 contended that the accident took place due to the negligence of respondent No.1. The Insurance Company of Tata Tempo had taken statutory defence also.

4. Taking into consideration the evidence on record and hearing all the parties, the learned Tribunal has held that claimant had sustained injuries and permanent disability in the said vehicular accident. It was held that it was the negligence to the extent of 80 % of the jeep driver i.e. Respondent No. 3, and 20% was that of respondent No. 1. As aforesaid, total amount of Rs. 3,13,000/- has

been granted as compensation. It has also been held that the Insurance Company has failed to prove breach of terms of Policy, and therefore, the Insurance Company is jointly and severally liable to pay compensation with respondent No. 3.

5. It has been vehemently submitted on behalf of the Appellant that evidence has been laid by the claimant to prove that he has suffered head injury. Initially, the certificate of disability issued by the treating Doctor was showing 15 % disability and it is at Exhibit - 56. At that time, the claimant was examined on 19.12.2007. Thereafter, once again, he was assessed for disability during the pendency of the petition. His disability was re-evaluated on 9th July, 2009, and it has been held that his disability is to the extent of 40 %. In order to prove the said certificates, claimant examined CW1, Dr. Ashok Kukade, who has in clear terms stated that claimant is unable to do his daily activities. It had come on record by evidence of CW2 and CW3 that claimant was doing business as tailor. Under such circumstance, he is totally unable to do any work though his permanent physical disability was to the extent of 40 %, yet, he has suffered 100 % financial loss. The learned Tribunal has erred in taking income of the claimant @ Rs. 3,000/- per month, when in fact, he ought to have been considered as skilled labour. No proper amount has been given under the head of Pain and Sufferings and Disability. A very meagre amount has been granted as

compensation which definitely requires enhancement.

6. Per contra, the learned Advocate Mr. Dhananjay Deshpande appearing for respondent No. 4 submitted that the learned Tribunal has assessed the evidence properly. In fact, there was no necessity for re-evaluation of the disability during the pendency of the petition. The intention is very much clear. The claimant intended to get more compensation, and therefore, the subsequent so-called re-evaluation has been done. In his cross-examination, CW1 Dr. Kukade has clearly stated that at the time of discharge on 09.08.2007, the claimant was found fit enough, then the question arises, as to how his percentage of disability would have increased. The treating Doctor has also stated that after the discharge and before 29.04.2009 i.e. issuance of re-evaluation certificate, he was not knowing the status of claimant, and therefore, due to another injury, claimant may cause post head injury. Under such circumstance, whatever computation of compensation has been made by the learned Tribunal, is correct. Claimant claims that he was doing tailoring business and at that time, we should bear it in mind that the claimant is residing at village Killari, how far he could have got orders to stitch cloths in a rural area is required to be considered.

7. Important point to be noted is that none of the respondents

have filed any appeal challenging the findings of the learned Tribunal, which have gone against them. Under such circumstance, the scope of this appeal is very much limited. In spite of notice to other respondents, they have failed to appear in this appeal. Therefore, taking into consideration the scope of the appeal and the points, those have been submitted, following points arise for determination, findings and reasons for the same are as follows :-

- (i) Whether the learned Tribunal erred in holding functional disability as well as financial disability to the extent of 40 % only ?
- (ii) Whether the learned Tribunal was justified in awarding compensation of Rs. 3,13,000/- only ?

8. Here in this case, the claimant himself has not entered the witness box. However, he has laid evidence through other witnesses in order to bring on record his occupation, income and disability. The learned Tribunal has held that the claimant has proved that he has sustained permanent disability to the extent of 40 %. This decision was based on the evidence of CW1, Dr. Kukade and the certificates issued by him at Exhibits 56 and 57. In other words, the learned Tribunal did not find any fault in respect of certificates Exhibits 56 and 57, especially, Exhibit 57, though it was issued during the pendency of the petition for revaluation. The Insurance Company cannot now challenge into (without filing an appeal or cross

objection) that the disability of claimant was less than 40 %. Therefore, taking into consideration the permanent physical disability as certified by the treating Doctor, we are required to consider as to whether it has turned into 100 % financial loss to the claimant. In his examination-in-chief, CW1, Dr. Kukade has specifically stated that disability caused to the claimant is due to delayed post head injuries effect. When he had examined claimant for Exhibit - 57, he found that the claimant was unable to communicate, he had gross loss of memory with irrelevancy. He also found that the claimant had gross cerebral disfunction, amnesia, irrelevance and unable to answer any question. Therefore, he got the MRI examination of the claimant done. After MRI, he found that there is cerebral atrophy and demyelination i.e. loss of conduction fibres. Further, he has stated that the claimant is unable for sexual intercourse, and he is unable to do his daily activity. Thus, in clear terms, he has stated that claimant will not be able to do any work as before. Except the denials in cross, there is nothing. There is no reason to disbelieve the treating Doctor. Under such circumstance, the learned Tribunal erred in holding that there is only 40 % loss of earning capacity of the claimant.

9. Now, turning towards the quantum, the claimant had contended that he was earning Rs. 5,000/- per month prior to the accident. He has examined CW3 Mohan Sonwane, who has photo

shop adjacent to the tailoring shop of the claimant. At the most, it can be said that from his testimony, it had come on record that claimant was running tailoring business in the name and style as "Raj Tailors". CW4 Satish Pawar is the real brother of the claimant, who is now running the said shop. Though, he has stated that his brother was earning Rs. 5,000/- to Rs. 10,000/- per month, except bare words, there is nothing. Though, he has stated that he is running the said shop, he is not giving any earning to his brother. In cross-examination, he admitted that he is keeping accounts of his business, but he has not produced it on record. It could have given a idea as to how much income he is deriving from the business. Thus, except the bare words, there is nothing is on record to show that claimant was earning Rs. 5,000/- to Rs. 10,000/- per month. Learned Tribunal was justified in invoking notional income theory. Learned Advocate for Appellant submits that claimant should have been considered as skilled labour. But at the same time, he relied on decision of this Court in ***Tukaram Baliram Jagtap Vs. Babasaheb Rajaram Garad and others (First Appeal No. 4323 of 2008 decided on 27.10.2015)***. In this case, the claimant was a practicing lawyer, yet, this Court had taken his income at Rs. 3,000/- per month, taking into consideration the fact that in evidence, it was suggested that his earnings are Rs. 5,000/- per month. Under this circumstance, the income of claimant will have to be considered

@ Rs. 3,000/- per month. There is substance in the submission on behalf of respondent No. 4 that claimant running the said business in village Killari that too in the year 2008 is required to be considered while invoking the notional income theory.

10. Further, in view of the decision in ***National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017 SCC Online SC 1270***, the claimant being self-employed aged 30, 40 % of the income is required to be added towards future prospects. That amount comes to Rs. 1,200/- per month (40 % of Rs.3,000/- per month). After adding the future prospects, the income of the claimant would come to Rs. 4,200/- per month, yearly it would be Rs. 50,400 (Rs. 4,200/- p.m. X 12 months). Taking into consideration, the fact that he is unable to work at all now i.e. 100 % financial loss, his compensation is computed on this basis, and there is no question of deduction of any amount towards the personal expenditure. Further, in view of the decision in ***Sarla Varma and others Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121***, and the age of the claimant as 30, the just multiplier in this case would be “17”. After applying the multiplier, the total loss of income for the claimant would be Rs. 8,56,800/-.

11. The medical bills, those have been proved by the claimant and which have been directed to be reimbursed by the Tribunal are

to the extent of Rs.85,000/- (Exhibits 59 to 68) and Rs. 35,000/- (Exhibits 70 to 114). These amounts are required to be awarded.

12. Further taking into consideration, the evidence of CW1, Dr. Kukade quoted above, amount of Rs. 2,00,000/- is awarded towards the Pain and Sufferings and this is in view of the decision by the Apex Court in ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and Anr. 2013 AIR (SCW) 4867***. Almost similar view has been taken and more amounts have been awarded towards Pain and Sufferings in ***Mohan Soni Vs. Ram Avtar Tomar and Ors. 2012 ACJ 583, Lal Singh Marabi Vs. National Insurance Company Limited and Ors. (2017) 5 Supreme Court Cases 82***, so also, *Tukaram Jagtap's case* (supra). Further amount of Rs. 2,00,000/- is awarded towards loss of amenities and Rs. 1,00,000/- is awarded towards loss of expectation of life. Taking into consideration the fact that the claimant has now lost his memory and would be required to depend upon his family members for all the activities. Further amount of Rs. 23,200/- is awarded towards attendance and travelling expenses, taking into consideration the fact that the claimant is resident of Killari and had taken treatment for a considerable period at Latur. Thus, the claimant is entitled to get compensation of Rs. 15,00,000/- inclusive of amount under 'No Fault Liability'. Though, the claimant has calculated the compensation to the extent of Rs. 12,30,000/- yet, this Court is duty bound to award just compensation. The compensation

more than claimed, need not be rejected on the ground that there is deficit Court Fee. The deficit Court Fee can be recovered from the claimant.

13. For the aforesaid reasons, the following order is passed :-

(I) The Appeal is allowed.

(II) The Award passed by the Tribunal is set aside and modified as under :-.

(A) It is held that the Appellant/Claimant is entitled to get compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) (inclusive of amount of Rs. 25,000/- awarded under 'No Fault Liability'). The said amount is to be paid together with interest @ 7 % per annum from the date of petition till actual realization of entire amount.

(B) The above said amount should be paid by respondents No. 1 and 2 to the extent of 20 % of the entire decretal amount and by respondents No. 3 and 4 to the extent of 80 % of the entire decretal amount, jointly and severally.

(C) The amount already paid shall be adjusted as on date.

(D) On realization of the amount of Rs. 7,00,000/- be deposited in Fixed Deposit Receipt in the name of claimant

in any Nationalized Bank for the period of five years, and after the period of maturity, the entire amount be paid to him without waiting for orders from the Tribunal/Court.

- (E) Rest of the amount be given to the claimant by Account Payee Cheque.
- (F) No order as to costs.
- (G) The deficit Court Fee to be paid by the appellant within a of one month.

[SMT. VIBHA KANKANWADI]
JUDGE

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