

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 3331 OF 2016

Tryambak Dhondiram Chavan,
Age; 50 yrs, Occ; Agricultural Labour,
R/o; At Pimperkheda,
Tq. Sindkhed Raja, Dist; Buldhana.
At present R/o; Lane No. 3,
Hanuman Nagar, Aurangabad.

...APPELLANT
(Original Claimant)

VERSUS

1. Balsubramanyam Natrajan Soriyar,
Age; Major, Occ; Driver,
R/o; Bhilai, Tq. & Dist. Durg,
(Chattisgarh State).

2. Vijaykumar Ramkewal Thakur,
Age; Major, Occ; Business,
R/o; Brindanagar Champ,
B.S.P. Office Road Bhilai,
Tq. & Dist. Durg,
(Chattisgarh State).

3. The Divisional Manager,
The New India Assurance Company Ltd.,
Near Kranti Chowk, Adalat Road,
Aurangabad.

...RESPONDENTS
(Orig. Respondents)

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Shri. D.A. Naik, Advocate for Appellant
Shri. M.R. Deshmukh, Advocate for Respondent
No.3.

....

CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 03/04/2019

Date of Pronouncing Judgment : 16/04/2019

JUDGMENT :

This appeal is directed by Original Claimant against the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No. 568 of 2013, (hereinafter referred to as the 'MACP') whereby, the compensation of Rs. 25,000/- was awarded including No Fault Liability. Appellant is the original claimant, respondent No. 1 is driver and respondent No. 2 is the owner of offending truck No.CG-07-C-4633 (hereinafter referred as "offending vehicle") and respondent No. 3 is insurer of the offending vehicle Hereinafter the parties are referred in accordance with their status in the original proceeding as Claimant, Driver, Owner of the offending vehicle and the Insurer respectively.

2. This appeal is filed by the claimant only for enhancement of compensation. No Cross-Objection or Cross-Appeal is filed by the Insurer or the owner of the offending vehicle. Therefore,

facts leading to the institution of this appeal need not be mentioned.

3. Heard Shri. D.A. Naik, learned counsel for Appellant Shri. M.R. Deshmukh, learned counsel for Respondent No.3.

4. Learned counsel for claimant submits that though claimant sustained 10% permanent disability to his left thumb of the hand and back bone, the Tribunal did not consider the future loss of income of the claimant. He submits that the claimant was labour and due to back pain, he is not able to do work as field labour. Therefore, there should be substantial hike in compensation under the head of loss of future earning.

5. Learned counsel for appellant submits that though claimant sustained fracture injury, the Tribunal awarded meager compensation of Rs. 15,000/- towards pain and suffering and medical expenditure. He submits that under the head of nutritious diet, meager amount of compensation of Rs. 5,000/- is awarded. He has also contended

that under the head of attendant charges and conveyance compensation of Rs. 5,000/- is awarded. He prays for substantial escalation in the total compensation amount.

6. In reply, learned counsel for respondent No. 3 submits that the petition is filed after an inordinate delay and the Medical Officer, Dr. Prakash Ujgare (PW 2) examined by the claimant, nowhere deposed regarding injury to back bone and back pain to the claimant or regarding his physical disability. He submits that as earning capacity of the claimant as field labour is not affected due to permanent disability, which is restricted to movement of left hand thumb, there cannot be enhancement of compensation. However, he fairly submits that under the non pecuniary heads, such as loss of amenities and permanent disability, reasonable compensation can be awarded.

7. So far as compensation in injury cases, the Apex Court in "**Rajkumar vs Ajay Kumar and another**" [2011 (2) Mh. L.J. 569] has laid down

principles for award of compensation. In view of those principles, the heads under which compensation is awarded in personal injury cases are as follows :

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).

8. The Apex Court has made it clear that in routine personal injuries cases compensation will be awarded only under the head of expenses relating to treatment, hospitalization, medicine, transportation, nourishing food, loss of earnings during the period of treatment and damages for

pains and suffering and trauma as a consequence of the injuries. Only in serious cases of injuries, where there is specific medical evidence corroborating the evidence of claimant, 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.

9. The Apex Court has also made it clear that percentage of permanent disability with reference to the whole body of person, would not be assumed to be the percentage of loss of earning capacity. Permanent disability may result in different percentage of loss of earning capacity in different persons depending upon the nature of profession, occupation or job, age, education and other factors.

10. In the case at hand, no doubt, as the insurance company has not filed appeal against the judgment and award passed by the Tribunal, the finding of the Tribunal has reached finality that in the motor vehicular accidents, the claimant

sustained 10% permanent disability. On behalf of claimant, Dr. Prakash Ujgare (PW 2) is examined. This witness has examined the claimant on 25.4.2012, when the accident occurred on 19.12.2006. He is not the witness who treated the claimant after occurrence of the accident. Therefore, his evidence is to be assessed with caution as directed by the Apex Court in the case of **"Rajkumar vs Ajay Kumar and another"** [supra].

11. From the evidence of Dr. Prakash Ujgare (PW 2), it emerges that the claimant was treated in the Government Hospital. In Government Hospital treatment is being given to the patient free of cost. The bills of medicines purchased by claimant for his treatment are not proved by the claimant. Therefore, no compensation can be awarded to the claimant under the head of medical expenditure. The Tribunal has rightly declined to award compensation under this head.

12. Dr. Prakash Ujgare (PW 2) has nowhere deposed before the Tribunal that due to permanent

disability sustained by the claimant, his earning capacity as field labour is in any manner adversely affected. Therefore, no compensation can be awarded to the claimant under the head of loss of future earning on account of permanent disability. Medical Officer, Dr. Prakash Ujgare (PW 2) no where deposed regarding the future medical expenses of the claimant. Therefore, no compensation can be awarded under the head of future medical expenses. So also by considering fracture by metacarpal bone of the left hand of claimant, the Tribunal has awarded compensation of Rs. 15,000/- under the head of pains and suffering. Considering the nature of this injury, I am fully satisfied that compensation of Rs. 15,000/- under the heads of pains and sufferings is just and reasonable and needs no interference.

13. So also considering traveling rates for transportation in the year 2006, the Tribunal has rightly awarded compensation to the claimant of Rs. 5,000/- under the head of transportation charges. Therefore, after going through the evidence placed on record, I am fully satisfied

that under the head of pecuniary damages, the compensation awarded by the Tribunal is just and proper and needs no interference.

14. However, it cannot be ignored that from the evidence of Medical Officer, Dr. Prakash Ujgare (PW 2), it becomes clear that due to fracture of metacarpal bone on left hand of the claimant, the movements of left hand wrist of claimant were restricted up to 30%. So also there was weakness of 1% pinch, therefore, under the head of loss of amenities, additional compensation of Rs. 10,000/- needs to be awarded. In addition to this, considering 10% permanent disability, I feel it desirable to award additional compensation of 10,000/-. Thus, by partly allowing this appeal, the award passed by the Tribunal needs to be modified to enhance the compensation awarded by the Tribunal to the tune of Rs. 45,000/-.

15. Accordingly, First Appeal No. 3331 of 2016 is partly allowed. The judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, in MACP No. 568 of 2013, is modified

to enhance the compensation to the tune of Rs. 45,000/-. Remaining part of the award passed by the Tribunal is confirmed as it is, regarding the percentage of 9% interest on compensation amount.

16. Parties to bear their respective costs of the appeal.

17. First Appeal No.3331 of 2016 is disposed of in above terms.

(**SUNIL K. KOTWAL**)
JUDGE

mahajansb/