

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2964 OF 2013

Rakesh s/o Omprakash Agrwal,
Age 46 years, Occupation Business,
R/o Parvati Niwas, Mastagd, Jalna,
Tq. and Dist. Jalna.

...Appellant.
(Orig.Claimant)

VERSUS

1. Tirupathigh s/o Gopelan,
Age Major, Occupation Business,

2. Guruparthi Sivanga Shankarrao
s/o Venkateshwarrao, Age 35
years, Occupation Driver,

Both R/o Mangalpuram Near
Nimathate, Vijaywada (A.P.).

3. The Oriental Insurance Company
Ltd., Vijaywada (A.P.) Through
Branch Manager, The Oriental
Insurance Co. Ltd., Sarojani
Devi Road, Jalna Dist. Jalna.

4. Jagdishing s/o Suryanathsing Rathi,
Age 45 years, Occupation Business,
R/o C/o Vijayant Travels, Near Hotel,
Godavari Dwarka Circle, Nashik.

5. The New India Assurance Co.Ltd.,
Nashik Through Branch Manager,
The New India Assurance Co.Ltd.,
Lakkadkot, Aurangabad road, Jalna
Dist. Jalna.

...Respondents.
(Orig.Respdts.)

....

Advocate For Appellant : Mr. R. S. Mubashir.

Advocate For Respondent No.3 : Mr. M. K. Goyanka.

Advocate for Respondent No.5 : Mr. A. B. Kadethankar.

....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Judgment :
15-07-2019**

**Date Of Pronouncing The Judgment :
24-07-2019**

JUDGMENT :

1. Present appeal has been filed by the original claimant for enhancement in the compensation granted by learned Motor Accident Claims Tribunal.

2. The present appellant – original claimant filed Motor Accident Claim Petition No. 180 of 1999 before Ex-officio Member Motor Accident Claim Tribunal, Jalna, for getting compensation under Section 166 of Motor Accident Claims Act, 1988. He had come with a case that, he was travelling in his tourist bus bearing No.MH-15/B-9749 on national highway No.5 at about 8.30 p.m. on 22-01-1999. When the bus was just two kilometers away from Nagapalli police station in Andhra Pradesh, the bus was dashed by truck bearing No.AHH-3244 which had come from opposite direction. The claimant sustained serious injuries to his chest and back, so also to his spinal cord. It is stated that, there was a fracture and he has become permanently disabled. According to him he was earning Rs.10,000/- to Rs.15,500/- per month from his business. The truck was driven by respondent No.2 and as a result of his negligence, the said

accident had taken place. The said truck was owned by respondent No.1 and was insured with respondent No.3. In all he had claimed compensation of Rs.3,00,000/- with interest.

3. Respondents No.1 and 2 though duly served, remained absent. Respondent No.3 resisted the claim by filing written statement and denied all the allegations. It is specifically denied that, the accident took place due to the negligence of truck driver. According to the insurance company, the driver of the bus was rash and negligent and because of his act, the said accident had taken place. It is denied that the claimant has sustained permanent physical disability.

4. Respondent No.4 by filing written statement submitted that, he is not the owner of the bus bearing No.MH-15/B-9749 and he has been wrongly impleaded as party. Other contents of the petition have been denied by him. He denied the fact that, claimant had hired his vehicle from him. According to him the vehicle stood in the name of Electronica Leasing and Finance Ltd., Nashik. He had taken the same on lease. After the payment of installment of the vehicle, it was to be transferred in his name. He had then agreed to sell the said vehicle to Sow. Anita Rakesh Agrawal and she had agreed to pay the remaining installments. As Sow. Anita Agrawal did not pay the installments, he was required to pay the same. She is the wife of claimant. He has filed a case before Consumer Redressal Forum

and demanded amount from the claimant and his wife.

5. Respondent No.5 was the Insurance Company of the bus. By filing written statement the said company has also denied all the averments in the petition. Both the Insurance Companies have taken statutory defences.

6. Taking into consideration the evidence on record, the learned Tribunal had come to the conclusion that the claimant has proved that, there was negligence on the part of respondent No.2 to the extent of 75 % and it was held that the bus driver was also responsible for the accident to the extent of 25 %. Thus it was stated that, the case is of composite negligence. Compensation of Rs.1,00,000/- inclusive of 'No Fault Liability' was awarded. Hence, present appeal by the original claimant.

7. It is to be noted that, the respondents have not challenged the said Judgment and award in order to challenge the findings which have gone against them. Under such circumstance, the case is restricted to the enhancement in the compensation only. Taking into consideration the said aspect and scope, following point arise for determination, finding and reason for the same is as follows ;

(1) Whether the compensation that has been granted by the Tribunal can be said to be just compensation ? If no, then what could be the just compensation ?

8. Heard learned advocate Mr. R. S. Mubashir Ali, for appellant, learned advocate Mr. M. K. Goyanka, for respondent No.3, and learned advocate Mr. A. B. Kadethankar, for respondent No.5. Other respondents though served, failed to appear.

9. The learned advocate appearing for the appellant submitted that, meager amount has been granted by the Tribunal when it had come on record that the claimant has sustained 30 % permanent physical disability. It was held by the learned Tribunal that the financial disability is to the extent of 1 % only. No proper amount was granted under the head pains and sufferings. Therefore, the amount deserves to be enhanced. He relied on the decision in *United India Insurance Company Ltd. Versus Sunil Kumar and Anr.*, reported in 2014 (1) Bom.C.R. 191.

10. Per contra, both the learned advocates appearing for respondents No.3 and 5 supported the reasons given by the Tribunal so also the computation of compensation.

11. At the outset it is to be noted that, though the claimant contended that, he earns Rs.10,000/- to Rs.15,000/- per month from business, he had not produced any documentary evidence to support the said contention. He could have definitely produced his income tax returns in order to prove his earnings. Further though he has examined CW.2 Dr. Sudhakar Mhaske to prove that the

disability of the claimant is to the extent of 30 %, yet it is to be noted that, in his examination in chief he has not stated that claimant cannot perform his work as before. Though it was stated by him that the claimant was suffering from 'Traumatic wedge compression body of Vertebrae Paraspinal muscle spasm without Neurological deficit', he has not stated that the said disability has affected the working capacity of the claimant. Under such circumstance, there was nothing on record to show that the said disability has affected the financial capacity of the claimant. Therefore, the learned Tribunal was justified in not applying the multiplier theory in this case. Amount of Rs.30,000/- has been awarded towards disability and which can be said to be a just amount taking into consideration the fact that the accident had taken place in the year 1999. The amount incurred for purchasing medicines has been reimbursed, for special diet amount of Rs.10,000/- has been granted. So also for loss of business for seven months, amount of Rs.30,000/- has been granted. So care has been taken to grant amount under these heads. The only factor that is required to be reviewed is, towards pain and sufferings amount of Rs.2113/- has been granted. How this figure has been arrived at has not been explained, but it appears that the learned Tribunal wanted to give a round figure, and therefore, whatever was deficit was adjusted towards head of pain and sufferings. This could not

have been done. Taking into consideration the fact that the claimant has suffered disability to the extent of 30 %, appropriate amount ought to have been awarded towards pain and sufferings. Hence, now the amount of Rs.30,000/- (taking into consideration the fact that the accident had taken place in the year 1999 and there is no no attempt made by the claimant till today to adduce any additional evidence to show that the said disability has affected him up till now) under the head of pain and sufferings and this amount is apart from the amount that has been given by the Tribunal.

12. The authority which has been relied by the learned advocate for the claimant is under Section 163-A of Motor Vehicles Act and it is on totally different point. Under such circumstance, that ratio cannot be considered here.

13. For the aforesaid reasons, the appeal deserves to be partly allowed. Hence, following order ;

ORDER

(1) Appeal is hereby partly allowed.

(2) The Judgment and award passed by learned Ex-Officio Member, Motor Accident Claims Tribunal, Jalna, dated 25-08-2004, in Motor Accident Claim No.180 of 1999, is hereby set aside to the extent of quantum only and modified as follows ;

"The claim is partly allowed and proportionate cost to the extent of Rs.1,30,000/- inclusive of 'No Fault Liability'."

(3) It is clarified that, taking into consideration the apportionment of negligence between respondents No.1 to 3 on one part to the extent of 75 % and respondents No.4 and 5 to the extent of 25 %, the amount now increased be apportioned 75 % and 25 % amongst them respectively.

(4) The amount deposited up till now be adjusted towards the amount now awarded and upon the deposit of the balance amount it be disbursed to the claimant.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.