

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

First Appeal No. 02661 of 2018

District : Nanded

Gangadhar s/o.Sambhaji Mangalwad,
Age : 36 years,
Occupation : Service,
R/o. Umarkhed,
Taluka Umarkhed,
Dist. Yawatmal.

.. Appellant
(Original
claimant)

versus

1. Adhik s/o. Baban More,
Age : Major,
Occupation : Business,
R/o. Nimsod,
Taluka Khatav,
Dist. Satara
(Insurer of Tempo bearing
no. MH-04/DD-7258)

.. Respondents
(Original
respondents)

2. New India Assurance Company
Ltd.,
Through its Divisional Manager,
Divisional office at Lahoti
Complex, Vazirabad, Nanded.

.....

Mr. S.N. Janakwade, Advocate, for the appellant.

Respondent no.01 served (Absent).

Mr. M.R. Deshmukh, Advocate, for respondent no.02.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 12th June 2019**

**Date of pronouncing
the judgment : 22nd July 2019**

JUDGMENT :

01. Present appeal is filed by original claimant for enhancement in the compensation granted to him by the Member of the Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No. 194 of 2016 on 21-04-2018. He had filed the petition under Section 166 of Motor Vehicles Act, 1988.

02. Original claimant had sustained permanent disability in a vehicular accident. The accident had taken place on 31-12-2015, when he was returning on his motorcycle bearing No. MH-29/AS-5236 to his village Talegaon. When he was near Dorli, he was dashed by Tempo bearing No. MH-04/DD-7258. The said Tempo had come from opposite direction. Accident took place due to the negligence of Tempo driver. That vehicle was owned by respondent No. 1 and it was insured with respondent No. 2-insurance company. Claimant had sustained serious injuries to his head, right shoulder, etc. He has undergone operations and took long treatment at various hospitals. He has spent Rs.6,00,000/- on his treatment. However, his injuries have not been cured. He has suffered permanent

disability. He was 33 years old at that time and was earning Rs.29,500/- p. m. salary as Krishi Sehay. He claimed compensation of Rs.20,00,000/-.

03. Respondents No. 1 and 2 had filed their separate written statements. They have denied the averments in the petition. They have denied the age, occupation and income of the claimant as narrated. They have denied that claimant has suffered permanent disability. They have also denied the allegations regarding negligence of driver of Tempo driver. It was admitted that the Tempo was insured with respondent No. 2. The insurance company has taken a defence that the vehicle belonging to respondent No. 1 has been falsely involved. First Information Report has been lodged after a month. Statutory defences have also been taken contending that company is not liable to pay compensation.

04. Taking into consideration the rival contentions, issues came to be framed. Only claimant has adduced evidence. After considering said evidence and hearing both sides, the learned Tribunal has held that claimant has proved that he had sustained injuries in vehicular accident caused due to the negligence on the part of the Tempo driver. Respondent No. 2 has failed to prove breach of terms of policy conditions and therefore, both the respondents are liable to pay compensation to petitioner. Amount of

Rs.5,00,000/- has been awarded as compensation and interest has been granted @ 9% p.a. from the date of the petition till actual realization of entire amount. Claimant is dissatisfied with the said quantum, hence filed this appeal for enhancement.

05. Heard learned Advocate Mr. S. N. Janakwade for appellant and learned Advocate Mr. M. R. Deshmukh for respondent No. 2. Respondent No. 1, though served remained absent. Respondent No. 2 – Insurance company has not filed any appeal or cross-objections challenging the findings on the issues given against it. The scope of this appeal is restricted to enhancement only; hence, following point arises for consideration. Findings and reasons for the same are as follows:

"Whether claimant is entitled to get enhancement in the compensation? If yes, to what extent?"

06. It has been submitted on behalf of appellant that permanent disability suffered by him, has resulted into loss of income. Learned Tribunal has not awarded any amount towards loss of earnings, including the future prospects. No amount is awarded under other conventional heads. Appellant has undergone 2 operations, that too relating to brain and head. Only an amount of Rs.25,000/- has been awarded for pain and sufferings. Further no amount is awarded for loss of

amenities. Therefore, whatever amount has been awarded is not as per the guidelines of Hon'ble Supreme Court or this Court. Reliance has been placed on the decision in *Anant Shidheshwar Dukre v/s. Pratap Ahamnnappa Lamzane and another* [2018 DGLS(SC) 812 : 2018 (9) SCC 450]; wherein it has been held that, "In cases of motor accidents leading to injuries and disablement, person must not only be compensated for his physical injury, but also for non-pecuniary losses which he has suffered due to injury. Claimant is entitled to be compensated for his inability to lead full life and enjoy those things and amenities which he would have enjoyed, but for injuries".

07. Per contra, the learned Advocate for respondent No. 2, supported the reasons and computation of compensation given by the learned Tribunal. He submitted that appellant is still in service and getting regular salary. Therefore, there was no loss of income for him. Evidence has been properly assessed by the Tribunal, which requires no interference.

08. It can be noted from the impugned judgment of the learned Tribunal that he has granted compensation under some heads only. No reasons have been assigned as to why compensation has not been granted under other non-pecuniary heads. Hence, assessment is required to be done under each of the heads, under

which compensation can be awarded.

09. Claimant has contended that he has sustained physical disability 25% of permanent nature. The disability certificate has been filed at Ex. 45, which has been issued by Medical Officer of Dr. Shankarrao Chavan Govt. Medical College and Hospital, Nanded. The author of said certificate has not been examined by claimant for the reasons best known to him. The said certificate has been exhibited in the deposition of claimant, which can not be taken as a proper proof of the document. Mere exhibition of a document can not also be considered as document is proved. It ought to have been proved by the claimant that due to his said physical disability, he is unable to work as before. In his cross, claimant has clearly admitted that he is still in service at the same post in Government. He is getting salary as before. Therefore, the learned Tribunal was justified in not awarding any compensation under loss of income with future prospects and by using multiplier theory. Only fact that ought to have been considered by the learned Tribunal was that claimant would have taken leave during the period of treatment. If he would not have sustained injuries and disability, his said leave would have been in balance. He was required to spend it, though may be earned leave, under the said forced circumstances for his treatment. That ought to have been reimbursed. Claimant has not stated exactly for

how many days he was on leave. The total period of his hospitalization is 41 days. He might have taken rest for some days at home for healing of injuries. Therefore, taking into consideration the nature of his injuries, period of hospitalization and treatment taken, it can be said that he might have taken 6 months rest. In other words, it can be said that claimant might have been forced to take either leave with pay only or/ + leave without pay during the period of treatment and rest advised. He has lost income during that period. Claimant was getting salary of Rs.29,500/- p. m. Therefore, the loss of income during treatment would come to Rs.1,77,000/- (Rs. 29,500 p. m. X 6 months). He is entitled to get this amount under the said head.

10. The total medical bills on record are to the extent of Rs.3,00,000/-. Claimant is entitled to get that amount reimbursed. Tribunal has awarded this amount to him. Amount of Rs.1,75,000/- has been granted under the head of medicine expenses, reports and purchase of blood, etc. This amount is proved by claimant by filing documents. Hence, he is entitled to get that amount. However, the learned Tribunal has not given appropriate amount for attendance charges. Claimant was hospitalized at Nanded and Hyderabad. Claimant is resident of Umarkhed, Dist. Yavatmal. Therefore, amount of Rs.50,000/- is awarded towards attendant charges and transportation to Nanded,

Hydrabad and stay at these places for himself and attendant.

11. It is to be noted from the hospital documents, injury certificate, his photograph as well as disability certificate that claimant had "head injury with left frontotemporal hemoragic contusion with acute subdural haemetoma with decompressive craniectomy". The photograph of claimant would show that portion of his head is missing, the area is decompressed and thereby there is defacement of claimant. Claimant was 34 year young person. Hence an amount of Rs.48,000/- has been awarded for defacement of the claimant. Taking into consideration that fact, learned Tribunal has granted only Rs.25,000/- towards pain and sufferings. In fact, the assessment of compensation under this head is to be made taking into consideration nature of injuries, period of treatment, place or places where treatment was required to be taken, operations undergone if any. In present case, as aforesaid, claimant had received the head injury and injuries at other part of the body and he has suffered permanent disability, two operations those were performed on him; just compensation under the head of pain and sufferings would be Rs.1,75,000/- (excluding amount of Rs.25,000/- already given by learned Tribunal under the same head).

12. It can be seen that half portion of head of

claimant has been lost resulting in defacement for him. When it was a head injury with compression, it is going to affect his life to some extent, though he has been continued in the service. Therefore, he is entitled to get amount of Rs.50,000/- under the head of loss of amenities.

13. Thus, claimant is entitled to get compensation of Rs.10,00,000/- (Rupees Ten Lakhs) as compensation under all the possible heads. Point is answered accordingly. Learned Tribunal has not assessed the compensation properly and it was much on the lesser side. It deserves to be enhanced. Though claimant had claimed compensation of Rs.20,00,000/- in the petition, he has restricted the enhancement to Rs.5,00,000/-. Under such circumstance, his appeal deserves to be allowed. Following order is therefore, passed :

ORDER

(a) Appeal is hereby allowed with costs.

(b) The judgment and award passed by learned Member, Motor Accident Claims Tribunal, Nanded in M. A. C. P. No. 194 of 2016 dt. 21-04-2018 is hereby set aside to the extent of quantum only and clause 02 of the operative order is modified as follows :-

“02 The respondent Nos. 1 and 2 should pay amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) (inclusive of amount under no-fault liability), jointly and severally to the petitioner together with interest @ 9% p. a. from the date of petition till actual realization of entire amount”

(c) Further clause 05 be inserted in the operative order, as follows:

“05. Out of the decretal amount deposited, an amount of Rs.4,00,000/- (Rupees Four Lakhs only) be kept in fixed deposit in the name of claimant, in any nationalized Bank of his choice for a period of 5 years. After the fixed deposit gets matured, the entire matured amount with interest be paid to claimant without getting any order from Tribunal/ Court”.

(d) It is clarified that rest of the award is maintained as it is.

(Smt. Vibha Kankanwadi)
JUDGE

.....