

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 873 OF 2014

Ravindra Krushnaji Koshe

....Appellant

V/s.

Gajanan Patil and anr.

....Respondents

Mr. T.J. Mendon for the appellant.

Ms. Poonam Mital for respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 16th OCTOBER, 2019

ORAL JUDGMENT :-

. The appellant who was the original claimant has impugned the judgment and award dated 29/06/2012 passed by the learned Member, MACT, Raigad in MACP No.287/2006.

2. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.1,60,000/- inclusive of no fault liability with interest @ 6% p.a. from the date of the application till its realization.

3. The appellant – Ravindra Koshe had sustained injuries in motor vehicle accident involving pulser motor cycle bearing no.MH 06/K 4894 which was owned by the respondent no.1 and insured by the respondent no.2. The injuries sustained in the said accident has resulted in 60% permanent disablement. The appellant had filed an

application under Section 166 of Motor Vehicles Act claiming total compensation of Rs.10,00,000/-.

4. The respondent no.2 – insurance company had raised the defense of contributory negligence. The respondent no.2 had further stated that the claim of the appellant was exorbitant.

5. Upon considering the evidence on record, the learned Tribunal held that the accident was caused solely due to rash and negligent driving by the rider of pulser motor cycle no. MH-06/K-4894. The respondents have not filed cross objections or cross appeals challenging the said finding. Hence, the only question which needs to be decided in this appeal is whether the quantum awarded by the Claims Tribunal is just and reasonable.

6. In ***Rajkumar v/s. Ajay Kumar and anr. (2011) 1 SCC 343***, the Apex Court has held thus :-

“ 6. The heads under which compensation is awarded in personal injury cases are the following :-

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). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. *Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. "*

7. In the instant case, it is not in dispute that as on the date of

accident, the appellant was employed as time keeper in HCC and was earning Rs.15,318/- per month as can be seen from the salary certificate at page 33 of the compilation. This fact is further corroborated by AW2 – Prabhakar Mukund Soman, Accounts Manager in HOC Rasayni. The evidence of AW3 – Narendra Sonoba Nehulkar, Civil Surgeon attached to Civil Hospital, Alibag reveals that the appellant had suffered head injuries and other injuries resulting in 60% permanent disablement.

8. Undisputedly, the medical expenses incurred by the appellant have been reimbursed by the employee. It is in evidence that the appellant continues to be in service. His promotional prospects are not affected on account of the injuries sustained in the said accident. The appellant is therefore not entitled for any additional compensation towards medical expenses and/or loss of actual or future earnings. There is also no evidence to indicate that the applicant needs any future medical treatment. Hence, the appellant is not entitled for any compensation for future medical expenses.

9. The record reveals that the appellant was hospitalized on 20/04/2006 and was discharged on 06/06/2006. The appellant has not produced leave records to prove the actual days of leave.

Nevertheless, considering the nature of injuries sustained by the applicant, it can be safely inferred that the applicant would not have been in a position to resume his duties at least for a period of four months. Hence, the appellant is entitled for compensation of Rs.61,272/- towards actual loss of earning during the period of treatment. The appellant has suffered life long disability which will hamper his day to day activity. Hence, the appellant is entitled for compensation of Rs.40,000/- towards loss of amenities and loss of expectancy of life. The appellant is thus entitled for total compensation of Rs.2,61,272/- which is rounded to Rs.2,62,000/-.

10. Under the circumstances and in view of discussion supra, the appeal is partly allowed. The compensation awarded to the claimant is enhanced from Rs.1,60,000/- to Rs.2,62,000/-. The respondent nos.1 and 2 are jointly and severally directed to deposit before the Tribunal, the balance amount of Rs.1,02,000/- with interest @ 6% p.a. from the date of the petition till final realization within a period of eight weeks from the date of uploading of this order. Award stands modified accordingly. The appellant is at liberty to apply for withdrawal of compensation. Record and proceedings be returned to the Tribunal.

Preeti H.
Jayani

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by Preeti H.
Jayani
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(SMT. ANUJA PRABHUDESSAI, J.)