

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 211 OF 2015

Vikesh Janraoji Ghyaar

VS.

Fakira Rambhauji Kumare and others

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. S. S. Alaspurkar, counsel for appellant.
Shri. U. L. Chhagani, counsel for respondent No.2.
Shri. P. N. Khadgi, counsel for respondent No.3.

CORAM : Manish Pitale J

DATED : 10.10.2019

By this appeal the appellant (original claimant) has challenged judgment and order dated 29.10.2014, passed by the Motor Accident Claims Tribunal, Amravati, whereby claim petition filed by the appellant has been partly allowed and the respondents No.1 to 3 have been directed to jointly and severally pay amount of compensation of Rs.92,500/- inclusive of no fault liability along with interest @7.00%p.a. to the appellant from the date of filing of petition till realization of the amount.

2. The appellant is aggrieved by the impugned judgment and order of the Tribunal, contending that the quantum of compensation granted to him is far less than what he was entitled to, on the basis of settled position of law.

3. The appellant was travelling in a mini truck

on 12.07.2010 when, at about 9.00p.m., the said mini truck dashed into a stationery truck which was parked in the middle of the road by its driver. As a result, the appellant suffered fracture injuries to both his legs, apart from receiving injuries on his chest and face. Due to the severe injuries to his legs, he had to be operated and he suffered permanent disability. At the time of the incident, the appellant was 13 years old and he was taking education. The appellant filed claim application before the Tribunal seeking compensation for the aforesaid permanent disability suffered by him. In support of his contentions, the appellant placed on record a certificate of disability issued by the General Hospital, Amravati (Exh.33), wherein it is categorically stated that the extent of disability suffered by the appellant was to the extent of 30%. The appellant also placed on record documentary and oral evidence to demonstrate the disability suffered by him and the expenses that he had to bear due to his medical treatment for the said accident.

4. Although the claim petition filed by the appellant was contested by the respondent, the Tribunal found that the stationary truck was indeed parked in a most negligent manner, due to which the accident had occurred and the appellant suffered injuries. The Tribunal also accepted the claim of the appellant that he had suffered 30% permanent disability due to the said incident.

5. But, while calculating quantum of compensation the Tribunal proceeded on the basis that since the appellant was a minor, his notional income was to be taken as Rs.15,000/- per year and thereafter by applying multiplier, calculations were made and it was found that the appellant was entitled to compensation of Rs.92,500/- for loss of earning capacity and under other heads including medical expenses etc.

6. The learned counsel appearing for the appellant submitted that since the Tribunal itself had accepted that the appellant was a minor aged about 13 years when the incident took place, the position of law as enunciated by the Hon'ble Supreme Court in the cases of **Master Mallikarjun vs. Divisional Manager, The National Insurance Co. Ltd.**, reported in **AIR 2014 SC 736** and **Kumari Kiran vs. Sajjan Singh and others** reported in **AIR 2015 SC (Suup) 694**, should have been applied and appropriate compensation ought to have been granted. On this basis, the learned counsel appearing for the appellant sought enhancement of compensation.

7. On the other hand the learned counsel appearing for respondents supported the impugned judgment and order passed by the Tribunal.

8. In the case of *Mallikarjun vs. Divisional Manager, the National Insurance Co. Ltd.* (supra) the

Hon'ble Supreme Court held that since it was difficult to give accurate assessment of compensation in the case of children suffering disability on account of motor accident, it would be appropriate that if the disability suffered by the minor victim was upto 30% to the whole body, compensation of Rs.3,00,000/- would be payable. This would be apart from the amount towards medical expenses and discomfort etc. Thereafter, in the case of *Kumari Kiran vs. Sajjan Singh and others* (supra), apart from following the aforesaid dictum laid down by the Hon'ble Supreme Court in the case of *Mallikarjun vs. Divisional Manager the National Insurance Co.Ltd.* (supra), it was further held that an amount of Rs.1,00,000/- would be payable to such minor victim towards shock, pain and suffering. Applying the said position of law, it become evident that the Tribunal in the present case committed an error in calculating quantum of compensation payable to the appellant by taking notional income of Rs.15,000/- per year and then applying multiplier etc. for concluding that the compensation payable to the appellant was only Rs.92,500/-.

9. In view of above, the appeal is allowed and in terms of the law laid down by the Hon'ble Supreme Court, as noted above it is held that the appellant is entitled to payment of compensation of Rs.3,00,000/- towards permanent disability of 30% suffered by him. In addition, an amount of Rs.1,00,000/- would be

payable to the appellant towards shock and pain suffered by him in the said incident. The Tribunal had granted Rs.5000/- as medical expenses, which amount deserves to be maintained. Therefore, the total amount of compensation to the appellant comes to Rs.4,05,000/-.

10. Insofar as grant of interest is concerned, the Tribunal has granted interest @7.00% p.a., but a perusal of the aforesaid judgments of the Hon'ble Supreme Court would show that payment of interest @9.00%p.a. has been held to be just and fair. Therefore, it is held that the respondents would be jointly and severally liable to pay amount of Rs.4,05,000/- along with interest @9.00%p.a. to the appellant from the date of the filing of the claim petition till actual payment to the appellant.

11. Accordingly, the respondent No.3 insurance company shall deposit the amount in terms of this order within a period of three months in this Court. Upon such deposit of amount, the appellant shall be entitled to withdraw the same immediately.

12. The appellant is granted time of two months for depositing additional Court fees.

13. Appeal is disposed of in above terms.

JUDGE