IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3044 OF 2008

Nagnath S/o. Sakhahari Shete,
Age. 44 years, Occ. Nil,
R/o. Ashti, Tq. Partur, Dist. Jalna. ...Appellant.

Versus

1. Keshav S/o. Trimbak Aghav,
Age. Major, R/o. Vidya Nagar,
Parli, Tq. Parli Vaijnath, Dist. Beed.

2. National Insurance Co. Ltd.
Through its Divisional Manager,
Hajari Chambers, Station Road,
Aurangabad. ...Respondent.

Advocate Mr. S.G. Chapalgaonkar, for the Appellant.
Advocate Mr. V.D. Rakh, for Respondent No. 1.
Advocate Mr. A.B. Gatne, for Respondent No. 2.

CORAM : MANGESH S. PATIL, J.

Judgment reserved on : 24.08.2020.
Judgment pronounced on : 02.09.2020.

JUDGMENT:

This is an appeal under Section 173 of the Motor Vehicle Act, by the original claimant questioning the assessment of compensation done by the Motor Accident Claims Tribunal, Ambejogai, in his Motor Accident Claim Petition No. 285/2000, by the judgment and award dated 10.10.2006.

2. Shortly stated the facts leading to the filing of this appeal are to the effect that the appellant was travelling in a jeep on 06.05.1998. A tractor bearing No. MH 23 B 2296 with a trolley came from the opposite direction in a rash and negligent manner and the trolley gave dash to the jeep. As a result the appellant sustained grievous injuries in the form of fracture ulna and leg and subsequently, the leg had to be amputate above knee and the doctor certified the permanent disability to be 80%.

3. The petitioner filed petition and claimed a total compensation of Rs. 4,00,000/- (Rupees Four Lac) under various heads. Respondent No.1 herein is the owner of the tractor but did not contest the petition. The respondent No. 2 herein is the Insurance Company with which the tractor was insured at the time of accident. It contested the petition by filing its written statement. The tribunal conducted the hearing by extending opportunities to both the sides and by impugned judgment and award granted compensation of Rs. 3,00,000/- and in addition awarded interest at the rate of 7.5% per anum from the date of the petition.

4. Being aggrieved and dissatisfied with the quantum the petitioner is before this Court. Admittedly, the respondent No. 2 - Insurance Company has not preferred any appeal. Consequently, the scope of the appeal is limited to determination just of compensation.

5. Learned advocate Mr. Chapalgaonkar, for the appellant submits that though the accident has occurred in the year 1998 and the petition was filed in the year 2000, the compensation will have to be assessed by taking into

account various subsequent pronouncements of the Supreme Court and it cannot be said that these subsequent decisions cannot be resorted to and relied upon. Learned advocate Mr. Chapalgaonkar, therefore cited following decisions:

1. Subulaxmi versus Managing Director, Tamil Nadu State Transport Corporation and another, (2012) 10 SCC 177,

2. Sanjay Kumar versus Ashok Kumar and another, (2014) 5 SCC 330,

3. Syed Sadiq and Others versus Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735.

6. The learned advocate submitted that the tribunal has not at all determined the compensation in just and fair manner. No separate compensation has been awarded for future loss and permanent disability. Though, the petitioner had claimed a meager amount of Rs. 4,000/- towards hospital charges, the tribunal has illegally refused it merely for non production of the bill. If the petitioner had sustained grievous injuries which had resulted in a fracture to the ulna and amputation of a leg and was treated as an indoor patient, the tribunal should not have refused compensation of Rs. 4,000/- for hospitalization. The learned advocate would further point out that even though it was a case of injury claim, the tribunal has grossly erred in deducting 1/3 of petitioner's income while assessing compensation under the head of future loss. Thus the tribunal has grossly erred in not reaching just compensation. Even the interest has been awarded at a lesser rate and this

Court may independently decided the just claim.

7. The learned advocate for the Insurance Company Mr. Gatne, pointed out that in the petition itself the petitioner had claimed a total compensation of Rs. 4,00,000/- under different heads and the tribunal has awarded a just compensation of Rs. 3,00,000/- by accepting the claim almost on all counts. He however fairly conceded that the tribunal has erred in deducting 1/3[r] towards personal expenses while assessing future loss even though it is merely an injury claim and not a death claim. The learned advocate Mr. Gatne, further submitted that the Supreme Court in the case of **Raj Kumar versus Ajay Kumar and another, (2011) 1 SCC 343,** has laid down the manner in which a compensation in case of injury claims has to be assessed and in the absence of any evidence, compensation cannot be awarded to the petitioner for future loss unless it is demonstrated that the disability which he suffered has actually resulted in diminishing his earning capacity. If the appellant is a government contractor as is averred by him, even if he has 80% permanent disability that will not diminish his capacity to earn from his occupation to the same extent.

8. The learned advocate Mr. Gatne further submitted that the accident in the matter in hand has taken place in the year 1998 and therefore while assessing the compensation and referring to the subsequent decisions, this fact be borne in mind while awarding compensation under different heads.

9. I have carefully perused the evidence and considered the rival submissions. Before approaching the matter in controversy, it is necessary to

emphasis that it is trite that irrespective of the actual claim put forth by a claimant the tribunal has to reach an independent assessment as to what is just compensation. Strict rules of pleadings are not applicable to the petitions for compensation filed under Section 166 of Motor Vehicle Act and the tribunal has to assess just compensation in the facts and circumstances obtaining in the case. I am emphasizing these aspects since the learned advocate for the respondent Insurance Company submitted that broadly the tribunal has assessed the compensation under different heads and has awarded it in accordance with the actual claim put forth by the appellant in his petition. The submission obviously ignores these trite principles that the tribunal is expected to arrive at an independent conclusion while reaching just compensation.

10. Perusal of the impugned judgment and award reveals that the tribunal has awarded compensation as under:

(a)	Medicines and medical treatment	-	10,000/-
(b)	For purchasing blood	-	1,000/-
(c)	Attendance	-	3,000/-
(d)	Artificial Limb	-	10,000/-
(e)	Travelling	-	1,000/-
(f)	Pains and sufferings	-	25,000/-
(g)	Future Loss	-	2,50,000/-

	Total	-	3,00,000/-

11. As far as the compensation under these minor heads like medicines, blood, attendance and transportation, there is not much of a dispute. However, the dispute mainly is in respect of assessment of compensation under the head of pains and sufferings, cost of artificial limb and the failure of the tribunal to award separate compensation for permanent disability and future loss. With respect, as has been rightly submitted by the learned advocate Mr. Gatne, for the Insurance Company, the decision in the case of Raj Kumar (supra) elaborately lays down the manner in which a tribunal should decide compensation in case of injury claims. As is observed therein, percentage of permanent disability may not always be decisive while assessing its effect on the actual earning capacity. It would depend upon the avocation, profession and nature of work of the claimant and effect of the disability on his earning capacity and his ability to resort to some other activity and function with such a disability. It is pertinent to note that the Supreme Court in its decision in the case of Subulaxmi (supra) has also referred to and relied upon the principle laid down in the case of **Govind Yadav versus New India Insurance Company Limited, (2011) 10 SCC 683,** extensively and which inturn had referred to and relied upon the decision in the case of Raj Kumar (supra).

12. Incidentally, like in the matter in hand, in the case of Subulaxmi (supra), the accident had taken place in the year 1998 and the claimant therein had suffered 86% disablement. She was a women aged 30 years and the injury sustained in the accident had eventually resulted in amputation of left leg below knee, abrasion in the right shoulder and later amputation of the right foot. Holding her income to be Rs. 1,500/- and bearing in mind the fact

that the claimant was a match industry worker, assessed the compensation separately for permanent disability and under the head of future loss. The High Court while computing the amount of compensation had not granted any amount for permanent disability but had enhanced the compensation under the head of loss of future income. While holding that the High court had erred in awarding compensation on a singular head relating to permanent disability and loss of future earning the Supreme Court has made following observations in paragraph 5:

> *"5. At the outset, it is requisite to be stated that the facts as have been adumbrated are not in dispute. Therefore, first we shall advert to the issue whether the High Court was justified in awarding compensation on a singular head relating to permanent disability and loss of future earning. In K. Suresh v. New India Assurance Co. Ltd., after referring to Ramesh Chandra v. Randhir Singh and B. Kothandapani v. T.N. State Transport Corpn. Ltd., this Court expressed the view that compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself. The Bench also relied upon Laxman v. Oriental Insurance Co. Ltd., wherein it has been laid down thus:*
>
> *"15. The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability,*

then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

Thus, the view expressed by the High Court on this score is not sustainable."

13. Following these observations one can safely conclude that the tribunal has erred in the matter in hand in not assessing the compensation under these two distinct heads and has merely awarded Rs. 2,50,000/- as future loss of income.

14. Conspicuously, even though the appellant was required to be treated for a period of almost two months and possibly must have been confined to his home due to amputation of the lag and may not have been able to resume his avocation, nothing has been awarded by the tribunal towards actual loss of income which would be a total loss for the period of at least three months.

15. Again, in the case of Subulaxmi (supra), the decision in the case of Govind Yadav has been reproduced in extenso holding that the decision in the case of Govind Yadav has dwelled upon the fundamental concept of just compensation regard being had to the value of life and limb. Referring and relying upon the decision in the case of Govind Yadav, in Subulaxmi (supra),

the Supreme Court awarded an amount of Rs. 1,00,000/- towards permanent disability which was a consequence of double amputation and in doing so also took note of the fact that the date of accident was 1998. Since in the matter in hand, the accident has taken place in the year 1998, when the appellant has suffered only one amputation, of a leg, it would be just and proper to award him Rs. 75,000/- under the head of permanent disability.

16. As far as loss of future earning is concerned, though the claimant averred that he was a contractor and was paying income tax, no record was produced before the tribunal regarding income tax and on the contrary during cross-examination he admitted that he was not paying any income tax. No oral and documentary evidence was produced to draw any inference of his avocation. Since there was no sufficient and cogent evidence before the tribunal, I find no illegality in the observation and conclusion of the tribunal in determining the compensation regarding future loss by holding the notional income of the petitioner at Rs. 36,000/- per anum.

17. Again, the tribunal has also committed an error in deducting 1/3 of his income towards personal expenses when it is not a death claim but an injury claim. Further, it is apparent that even the tribunal has not assessed the compensation under this head by taking into consideration the future prospects as laid down in the case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121.** Taking into account the date of birth of the appellant, he had just completed 40 years on the date of the accident and consequently, a multiplier of 14 would be applicable. He has been suffered 80% of disability, however, though there is absolutely no

evidence to show that what is the actual effect of this disability on the earning capacity of the appellant. If he is a contractor, though his occupation would involve extensive travelling, the physical disability would not have the effect of losing his earning capacity to the same extent of 80%. By resorting to inevitable guess work, I hold that the compensation under the head of loss of future earning can be assessed by taking the loss at 50%. Since, the appellant was 40 years of age, the future loss of prospects of 25% will have to be taken into account and thus the compensation under the head of loss of the earning capacity would turn out to be Rs. 3,15,000/- (Income Rs. 36,000/- per anum + 25% future prospect = 45,000 -50% = 22,500 x 14 multiplier).

18. It is also necessary to note that in the case of Subulaxmi (supra), the Supreme Court has awarded an amount of Rs. 1,00,000/- towards pains sufferings and trauma which in the present matter has been assessed at Rs. 25,000/- by the tribunal which needs to be modified. Further, in the case of Subulaxmi (supra), the claimant was awarded Rs. 1,25,000/- towards artificial limb whereas in the matter in hand the petitioner has merely been awarded Rs. 10,000/- so even a correction in that respect needs to be made. In Subulaxmi (supra), the High Court had declined to award interest on the enhanced compensation and the Supreme Court awarded the interest at the rate of 9 % per annum on the enhanced sum from the date of the claim petition. Therefore, even in the matter in hand I shall follow the same course. Thus, to sum up, the just compensation works out to be as under:

(a)	Permanent disability	-	75,000/-
(b)	Future loss	-	3,15,000/-
(c)	Pains and sufferings	-	75,000/-

(d)	Artificial Limb	-	1,00,000/-
(e)	Medicines and medical treatment	-	10,000/-
(f)	For purchasing blood	-	1,000/-
(g)	Attendance	-	3,000/-
(h)	Travelling	-	1,000/-

	Total	-	5,80,000/-

19. The Appeal thus deserves to be allowed and is accordingly allowed. The impugned judgment and award to the extent of assessment of compensation stands modified as under:

The respondent Nos. 1 and 2 shall jointly and severally pay an amount of Rs. 5,80,000/- (Rupees five lac eighty thousand) to the appellant together with simple interest at the rate of 9% per anum from the date of petition i.e. 10.05.2000, till realization of the entire amount of compensation. Out of the total amount of the compensation to be received by the appellant, 25% of the amount shall be deposited as a fixed deposit in his name in any Nationalized Bank for a period of three years and the balance shall be paid to him by an account payee cheque.

(MANGESH S. PATIL, J.)

S.P.C.