

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 109 OF 2015**

1. Bajaj Allianz General Insurance Co. Ltd.,
3C-D, Sesa Ghor, Patto Plaza,
Panaji-Goa, through its Authorized
signatory, Mr. Pravin Prabhakar Prabhu
2. Mr. Shaid Beig,
Son of Mohammad Beig,
Age 38 years,
Resident of H.No.129, Muslim wada,
Keri, Sattari-Goa. ... Appellants

Versus

Mr. Mahesh Gundappa Gouder,
Son of Shri Gundappa Gouder,
Age 21 years, Student,
Resident of H.No.20/159,
Nagali, Taleigao-Goa. ... Respondents

Mr. Amey Kakodkar, Advocate for the Appellants.

Mr. Valmiki Menezes and Mr. A. Shirodkar, Advocates for the Respondent.

Coram:- M. S. SONAK, J.

Date:- 20th July, 2020

ORAL JUDGMENT

Heard Mr. Kakodkar, learned counsel for the Appellants-

Insurance company and Driver of the insured vehicle and Mr. V. Menezes, learned counsel for Respondent – claimant.

2. On 17th December, 2015, this Court, made the following order :

"Heard the learned counsel for the appellants.

2. It is submitted that the appellants are only restricting the challenge to the quantum of compensation granted. The learned counsel submits that according to the appellants, the respondent would be entitled to the compensation of Rs.15,00,000/-.

3. Nonetheless, as there is an award passed by the learned Motor Accident Claims Tribunal, it is submitted that without prejudice to the contentions of the appellants, the appellants are ready to deposit the entire amount of the award before this Court, within a period of four weeks.

4. Hence, issue notice to the respondent, for final disposal, returnable on 14.01.2016."

3. Accordingly, Mr. Kakodkar advanced submissions and was heard on the issue of award of compensation, which according to him, was exorbitant in the present case.

4. The appeal is directed against the judgment and award dated 22nd June, 2015 made by the Motor Accident Claims Tribunal, North Goa, at Panaji disposing of Claim Petition No.38/2012 by awarding claimant the compensation of Rs.36,65,000/- together with interest at the rate of 9% per annum from the date of institution of the claim petition till its realization.

5. The claim petition, in which the impugned judgment and award came to be made was instituted by the claimant on account of permanent injuries suffered by him due to the accident which took place on 30th November, 2010 at 1.30 p.m., when the claimant alongwith his friend were proceeding from Shiroda via Lotulim on a Honda Twister motor cycle bearing registration No.GA-07-H-6691. The insured vehicle i.e. a truck bearing registration No.GA-04-E-2275 which was being driven in a rash and negligent manner on the wrong side (in "No Entry" zone) dashed the motor cycle.

6. Mr. Kakodkar, learned counsel for the Appellants submits that in this case the claimant has clearly suppressed the fact that after the accident of 30th November, 2010, the claimant, was involved in yet another accident which took place on 10th March, 2011, in the course of which the claimant, suffered injuries to the same hand, which is alleged to be permanently disabled on account of the first accident dated 30th November, 2010. He submits that it is only in the course of the cross examination of claimant's friend (AW3) that this fact emerged. He submits that leave was applied for and was granted to re-cross examine the claimant and in the course of such re-cross examination, this position was proved beyond doubt. Mr. Kakodkar submits that such suppression casts a serious doubt as to whether the so called permanent disability had any nexus whatsoever with the first accident of 30th November, 2010, which is the basis for the claim.

7. Mr. Kakodkar submits that it was the duty of the claimant to be candid to the Court and to further establish by the test of preponderance of probability that the injuries or rather the so called permanent disablement had nexus with the first accident dated 30th November, 2010 or that the same had no nexus whatsoever with the second accident dated 10th March, 2011. Since, no evidence has been led by the claimant on this aspect, the Motor Accident Claims Tribunal (MACT) clearly erred in accepting the case put forth by the claimant.

8. Mr. Kakodkar, then submitted that in any case the award of compensation is too excessive. He submits that there is absolutely no evidence produced on record by the claimant that he was indeed offered employment with salary of Rs.17,000/- per month by HCL in Pune. He submits that the MACT has clearly erred in accepting the claimant's case that he would have earned a salary of Rs.17,000/- per month but for injuries sustained by him in the accident.

9. Mr. Kakodkar submits that the MACT has also confused itself on the aspect of percentage of disability and the percentage in terms of loss of earning. He submits that by treating two concepts as one of the same, the MACT, has failed to follow the law laid down by the Hon'ble Supreme Court in *Raj Kumar Vs Ajay Kumar and another*¹. He submits that there is no clear evidence in the present case to sustain any finding on the aspect of loss of earning to the extent of

¹(2011) 1 SCC 343

40% as recorded by the MACT.

10. Mr. Kakodkar submits that in any case the award of compensation under various heads is excessive and not at all commensurate to the material reflected on record. Mr. Kakodkar submits that some compensation may be due to the claimant as was recorded in this Court's order dated 17th December, 2015. Since, the award which the MACT has made is grossly excessive and warrants interference.

11. Mr. Menezes defends the impugned judgment and award on the basis of reasonings reflected therein. He points out that the claimant in the first accident had produced all medical records, from which, the factum of second accident and re-admission of the claimant on account of the same was made quite clear. He points out that the second accident had absolutely no nexus to the percentage of permanent disability already incurred by the claimant and even the medical evidence supports this position.

12. Mr. Menezes points out that on the date of the accident the claimant was already holding a diploma in electronic engineering and it is on the basis of this diploma that the claimant was offered a job by the HCL in Pune paying a sum of Rs.17,000/- per month. He points out that there is ample evidence on record to indicate that the claimant had

in fact secured admission at an Engineering College offering a degree in Engineering but had to discontinue the degree course on account of the accident. He submits that the compensation awarded is in fact on the conservative side and requires enhancement. He submits that the principles laid down in *Raj Kumar* (supra) have been followed by the MACT and there is no warrant for interference on this course.

13. The rival contentions now fall for my determination.

14. The record does indicate that after the claimant sustained an accident on 30th November, 2010, he was discharged after going surgery on 7th December, 2010. Thereafter, for some time, that at least upto 8th January, 2011 the claimant, did report to the GMC for follow up treatment. On 8th February, 2010, the claimant, also obtained a certificate from the GMC in the context of securing a permission to engage services of a writer in order to write his degree examination. The record further indicates that the claimant met with yet another accident on 10th March, 2011, in which he fell off while riding pillion on a bike and again sustained injuries to his right hand, which was already injured by the accident on 30th November, 2010. Again, the claimant underwent surgical procedure and was discharged on 14th March, 2011.

15. The claim petition was instituted some time in the year 2011 and therefore, the claimant, should have candid to the Court and

made disclosure regards the second accident and thereafter proceeded to establish how the second accident has no serious nexus with the permanent disablement, which had already incurred on account of the first accident which took place on 30th November, 2010. To this extent, Mr. Kakodkar is right that the claimant deserves to be faulted to some extent. However, the moot question is whether the fact that this non disclosure was sufficient to conclude that the permanent disability has neither nexus with the first accident of 30th November, 2010 or that the permanent disability is a result, if not exclusively at least partially of the second accident dated 10th March, 2011.

16. Though, it is true that the claimant ought to have been candid to the Court in the peculiar facts and circumstances of the present case, it is not possible to go to the extent of holding that this is some case of deliberate suppression of some very material facts and circumstances. It was pointed out by Mr. Menezes that even in the course of examination, the claimant as well as the doctor who was examined, produced all records without any reserve. The medical record including in particular the medical case papers very clearly bear out the fact that the claimant was readmitted post the accident of 10th March, 2011 and underwent surgical procedure. The Appellants, were also given opportunity to re-cross examine the claimant. The Appellants also cross examined the doctor who categorically opined that the permanent disablement was a result of first accident dated 30th November, 2010

and was not really impacted by the second accident dated 10th March, 2011.

17. Therefore, this is not a case where the Appellants were denied any opportunity of cross examining the claimant or the doctor with a view to find out whether the permanent disablement had any nexus with the second accident of 10th March, 2011. The medical evidence, in the form of medical records as well as the deposition of doctor does suggest that the permanent disablement has nexus with the accident of 30th November, 2010 itself. In particular, the medical records indicate that there was complete transection of radial nerve leading to the right hand. There is evidence that on account of this transection, no sensations were felt in the claimant's right hand. The claimant was not in a position either to hold a glass or even to write with his right hand. All this was the position after the first accident of 30th November, 2010 itself. The medical records indicate that there was no improvement in this position at any stage thereafter. The second accident, caused the plate which was affixed after the first operation to be bent. There were further injuries which had to be corrected through bone grafting. However, all this does not indicate that it is the second accident which was the cause for the permanent disability and not the first.

18. The MACT has considered both documentary and oral

evidence on record. The MACT may have not discussed in detail, the aspect of the impact of second accident. However, upon appreciation of the evidence on record, it is not possible to conclude that the finding recorded by the MACT is erroneous or warrants any interference in this appeal.

19. In so far as the quantum of compensation is concerned, perusal of the impugned judgment and award indicates that the MACT has given no credence whatsoever to the circumstances that the claimant had already enrolled himself in a degree of Engineering College and he was required to give up this course on account of disability incurred by him on account of the accident. There is ample evidence on record to indicate that the claimant incurred compound fracture to the right humerus with radial nerve palsy. As a result, the claimant, has been deprived of the faculty of writing by his right hand. The certificate issued by the doctor (AW2) clearly records that the percentage of disability according to ALIMCO Scale comes to 50% for the right upper limb due to paralysis of forearm extensors and wrist and finger extensors. The certificate also records to head injury and CLW right shoulder and palm caused on account of accident dated 30th November, 2010.

20. The MACT on the basis of oral deposition of the claimant has accepted the claimant's case that he may have been offered

employment by HCL in Pune with Rs.17,000/- as monthly salary. The MACT has even otherwise reasoned that a person with diploma in Engineering was undoubtedly in a position to secure a job having monthly salary of Rs.17,000/-.

21. According to me, the determination of the monthly income by the MACT really calls for no interference in the facts and circumstances of the present case. The evidence indicates that the claimant had secured first class in the diploma course in electronic engineering. The MACT has made no award in respect of claimant having to abandon his engineering degree course on account of the disability incurred. Taking into consideration these circumstances, it is not possible to hold that the determination of monthly salary by the MACT is either excessive or exaggerated.

22. The MACT following the ruling of the Apex Court in the case of *Sarla Verma & Ors Vs Delhi Transport Corp.& Anr²*, added an amount of Rs.8500/- per month to this amount being the 50% increase towards future prospects. Admittedly, the claimant was 21 years of age at the time of his accident. Thus, the MACT has quite correctly treated the monthly income of the claimant at Rs.25,500/-.

23. Though, the MACT has not elaborated much, it is not as if the MACT in this case, has blindly taken the percentage of disability as

² (2009) 6 SCC 121

the percentage of disability for the entire body or the percentage of loss in earning capacity. The MACT has held that though the doctor has opined that the percentage of disability to the right hand is 50%, taking into consideration the fact that the claimant was a diploma holder in engineering and would have therefore attempted to secure some employment in the same field. The percentage of disability to the entire body can be taken approximately at 40%. The MACT has also reasoned that this percentage would correspond to the percentage of loss in earning capacity particularly since the claimant, was expected to work as an electronic engineer, which involves constant use of his right hand. The evidence on record bears out that the claimant was virtually deprived to use his right hand on account of palsy as well as other complications which are listed in the certificate issued by AW2. The evidence bears out that the claimant was not even in a position to hold a glass much less write with his right hand. Taking into consideration all these aspects, it cannot be said that the determination of 40% loss in earning capacity is either excessive or a finding which is not supported by evidence on record.

24. The analysis of the impugned judgment and award would indicate that the MACT was conscious of the principles laid down in *Raj Kumar* (supra). In any case applying the principles of *Raj Kumar* (supra) to the evidence on record in the present case, it can be safely concluded that the claimant did incur loss of earning capacity to the

extent of 40%. In this regard, the illustrations set out in paragraphs 13 to 16 of *Raj Kumar* (supra) are relevant and upon application of the same to the facts and circumstances of the present case, the findings recorded by the MACT are required to be upheld.

25. On the basis that the loss of earning capacity comes to 40%, the MACT has taken monthly income of the claimant at Rs. 15,000/-. There is no dispute in the multiplier in the present case would be 18. The compensation has been worked out on this basis and there is really no case made out to warrant interference.

26. The award of compensation towards pain and suffering, mental agony distress of Rs.1,00,000/- is also reasonable in the circumstances of the present case. The claimant was required to be admitted in the hospital and further, underwent surgical procedures. The award towards loss of marriage prospects is also not unreasonable in the facts and circumstances of the present case. The medical bills produced have been considered by the MACT and though the award of Rs.1,00,000/- appears to be on the higher side if compared with the bills produced, there is medical evidence on record that the claimant would require future treatment. The award towards transportation is also just and proper.

27. Therefore, taking into consideration the entire evidence on

record and applying the principles set out in *Raj Kumar* (supra) there is really no case made out to warrant interference in the impugned judgment and award.

28. For all the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs.

29. The record indicates that the claimant had already withdrawn some portion of the compensation deposited by the Appellants in this Court. Now that this appeal is hereby dismissed, registry to permit the claimant to withdraw the balance portion of the compensation together with interest, if any, that may have accrued thereon. This withdrawal may be permitted upon the claimant filing a formal praecipe.

M. S. SONAK, J.

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