

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

FIRST APPEAL NO. 122 OF 2006

Laxmikant S/o Prakashchandra Jain,
Aged - 36 Years, Occu.: Service,
R/o Laxminarayan Nagar,
Gondhawani Naka, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar ... Appellant

Versus

1. Prakash S/o Fulchandji Dungarwal,
Aged – 45 years, Occu.: Business,
R/o Shradha Agencies, Mahavir Peth,
Shrirampur, Dist. Ahmednagar.
2. United India Insurance Co. Ltd.,
Branch Office Nagare Building
2nd Floor, Ward No.4,
Bazar Road, Shrirampur,
Dist. Ahmednagar. ... Respondents

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Mr. A.D. Kasliwal, Advocate for the Appellant
Mr. V.D. Patnoorkar, Advocate for Respondent No.1
Mr. A.B. Gatne, Advocate for Respondent No.2

....

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 26.10.2021

Pronounced on : 17.12.2021

JUDGMENT :-

1. This appeal is directed against the impugned judgment and award passed in M.A.C.P No.1020 of 1998 by the Motor Accident Claims Tribunal, Ahmednagar.

2. The appellant had filed claim petition against the respondents before the Motor Accident Claims Tribunal at Ahmednagar under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of Rs.2,00,000/- on account of injuries caused to him in the motor vehicle accident.

3. The Tribunal after considering rival pleadings and evidence on record awarded compensation of Rs.75,000/- in lump-sum.

4. Heard Mr. A.D. Kasliwal, learned counsel for the appellant / original claimant, Mr. V.D. Patnoorkar, learned counsel for respondent no.1 / owner and Mr. A.B. Gatne, learned counsel for respondent no.2 / insurance company. Perused the impugned judgment and award passed by the Tribunal and evidence on record.

5. Mr. Kasliwal, learned counsel for the appellant / original claimant vehemently submitted that the Tribunal has not considered the evidence on record in a proper perspective. The claimant has produced his oral and documentary piece of evidence as well as examined his employer. Even then, the Tribunal has observed that no cogent evidence is produced by the claimant on

the point of salary. He submitted that the Tribunal has awarded the compensation in lump-sum, which is improper and incorrect. The Tribunal ought to have awarded the compensation to the claimant on the basis of multiplier method. The Tribunal has not awarded the compensation under conventional heads. The Tribunal has also not considered the fact that the claimant has sustained 25% permanent disability. The loss of income and loss of earning capacity is also not considered by the Tribunal. The claimant was 29 years old at the time of accident. The Tribunal has not considered that aspect while awarding compensation under the head of future income and loss of income. The findings recorded by the Tribunal are erroneous. The Tribunal has awarded very meager amount of compensation. It was the duty of the Tribunal to award just and fair amount of compensation having regard to the facts of the case and the evidence on record. It is, therefore, necessary to modify the award by enhancing the amount of compensation.

6. Mr. A.D. Kasliwal, learned counsel for the appellant / original claimant has placed his reliance in case of ***Anant S/o Sidheshar Dukre Vs. Pratap S/o Zhamnnappal Lamzane and Anr.*** reported in ***2018 ALL SCR 1814***.

7. Mr. A.B. Gatne, learned counsel for respondent no.2 / insurance company submitted that the appellant / claimant has not examined the doctor in support of his claim of permanent disability and loss of earning capacity. As such, the insurance company could not get an opportunity to cross-examine the doctor about the loss of earning capacity etc. He submitted that it was a case of simple fracture. It was a case of malunion of fracture and proper treatment was not taken by the claimant. Operating doctor is not examined by the claimant in order to prove the case of loss of earning capacity. There is no evidence except bare words of claimant. He submitted that allowances cannot be said to be the part of salary. He submitted that the amount of compensation awarded by the Tribunal is just and fair having regard to the injuries caused to the claimant and evidence on record. There is no merit in the appeal.

8 Mr. A.B. Gatne, learned counsel for respondent no.2 / insurance company has placed his reliance in case of ***Raj Kumar Vs. Ajay Kumar and another*** reported in (2011) 1 SCC 343.

9. On going through the impugned judgment and award delivered by the Tribunal, it is evident that, the Tribunal has awarded compensation of Rs.75,000/- to the appellant / claimant on account of injuries caused in the motor vehicle accident. The Tribunal has awarded the above said amount of compensation in lump-sum. Mr. Kasliwal, learned counsel for the appellant / claimant has rightly invited my attention to the citation in case of ***Anant S/o Sidheshar Dukre Vs. Pratap S/o Zhamnnappal Lamzane and Anr.*** (supra). It is held by the Hon'ble Supreme Court that, grant of lump-sum amount of compensation to the claimant by taking departure from multiplier method is incorrect. On going through the impugned judgment, more particularly para 10 and 11, the Tribunal has considered the expenses incurred by the claimant towards hospitalization and medical treatment, pains and sufferings, travelling, loss of salary etc. and awarded compensation of Rs.75,000/- in lump-sum. In view of citation in case of ***Anant S/o Sidheshar Dukre Vs. Pratap S/o Zhamnnappal Lamzane and Anr.*** (supra), it is clear that the Tribunal has committed an error in awarding lump-sum compensation to the claimant / appellant.

10. Even though, the appellant has claimed permanent disability to the extent of 25% on account of fracture injury, not examined the treating Dr. Patwardhan, who has issued the permanent disability certificate. There is no iota of evidence except bare words of the claimant in order to prove his 25% permanent disability affecting on his earning capacity and resulting into total loss of income. In case of ***Anant S/o Sidheshar Dukre Vs. Pratap S/o Zhamnnappal Lamzane and Anr.*** (supra), the victim was 29 years old, driver and suffered 75% permanent disability resulting into loss of his earning capacity of 100%. Therefore, the Hon'ble Supreme Court has re-assessed the compensation under the various heads including loss of actual income, loss of future income coupled with other heads by applying multiplier method. The facts of the case in hand are distinguishable from the facts of cited case.

11. Mr. Gatne, learned counsel for respondent no.2 / insurance company has rightly invited my attention to the citation in case of ***Raj Kumar Vs. Ajay Kumar and another*** (supra), wherein the Hon'ble Supreme Court has laid down the parameters / principles relating to compensation in cases of personal injury, manner of

assessment in cases of routine personal injury and serious injuries are distinguished. Para 5 to 8 of the above citation are important, which laid down the principles relating to the compensation in injury cases. Para Nos. 5 to 8 are reproduced hereunder :-

General principles relating to compensation in injury cases

“5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

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.

Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

12. On going through the certificates placed on record by the appellant / claimant, it is evident that, he has sustained fracture to lower 1/3rd femur left only. The x-ray plates are on record. It is material to note that Dr. Patwardhan, who has issued a permanent disability certificates (exhibit 63 and 64) and who was the treating doctor seems to have not been examined by the claimant in order to prove his case of permanent disability and loss of earning capacity.

13. This seems to be a routine personal injury case. Having regard to the parameters laid down by the Hon'ble Supreme Court in case of *Raj Kumar Vs. Ajay Kumar and another* (supra), the compensation in routine personal injury cases need to be awarded only under the following heads :

- (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 loss of earning during the period of treatment.

(iii) Damages for pain, suffering and trauma as a consequence of the injuries.

14. The Motor Vehicles Act, 1988 is a social beneficial legislature. The purpose of compensation is to fully and adequately restore the aggrieved to the position prior to the accident. It is the duty of Tribunal to award just and fair compensation.

15. The compensation needs to be re-assessed under various heads as under:-

Heads	Amount awarded
Hospitalization and expenses on medical treatment	Rs.37,737/-
Pain and Sufferings	Rs.20,000/-
conveyance	Rs.10,000/-
Special diet and nutrition	Rs.15,000/-
Loss of salary for 3 months	Rs.10,500/-
Total	Rs.93,237/-
Rounded off	Rs.93,500
Compensation awarded by Tribunal	(-) Rs.75,000/-
Enhanced compensation	Rs.18,500/-

16. Having regard to the above reasons, the appeal needs to be allowed partly as under:

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.75,000/- to Rs.93,500/-.
- (iii) The amount of enhanced compensation of Rs.18,500/- shall carry interest @ 6% p.a. from the date of institution of claim petition till the date of realization.
- (iv) Award be drawn accordingly.
- (v) R & P be sent to the Tribunal
- (vi) No order as to the costs.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane