

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

FIRST APPEAL NO.1139 OF 2018

Sau. Manjulabai @ Marabai Pralhad Patil
Age 45 years, Occu. Nil at present,
R/o Marathkhede, Post Savkhede Hol,
Taluka Parola, District Jalgaon ... **APPELLANT**

VERSUS

1. Shri Nana Bhika Chaudhari,
Age major, Occu. Transportation,
R/o Jahangirpura, Erandole, (Deleted as per
Taluka Erandole, Dist. Jalgaon Court's order
dated 23/11/2020)
2. The Oriental Insurance Co. Ltd.
Hall G and H, Central Phule Market,
Near Shastri Tower, Jalgaon,
through the Divisional Manager ... **RESPONDENTS**

.....
Shri M.M. Bhokarikar, Advocate for appellant
Shri A.G. Kanade, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

DATED : 10th AUGUST, 2021

J U D G M E N T :

This is an appeal under Section 173 of the Motor Vehicles Act. The appeal has been preferred by the original claimant for enhancement of compensation awarded to her on

account of injuries and permanent disability suffered in an accident involving motor vehicle. The learned Member, Motor Accident Claims Tribunal (MACT), Amalner partly allowed the Motor Accident Claim Petition (MACP) No.26/2006 granting the petitioners compensation of Rs.65,000/- (inclusive of NFL amount) with interest @ 6% p.a. on the sum of Rs.40,000/- from the date of petition till the date of actual payment or deposit in Court.

2. Heard. Learned counsel for the appellant/claimant would submit that, the petitioner suffered 15% permanent disability. As a result thereof, she has suffered loss of earning capacity. The Tribunal has not awarded adequate compensation. No compensation has been awarded towards pains and sufferings, special diet, conveyance etc. According to learned counsel, the Tribunal has not applied the formula to work out compensation amount on account of loss of earning capacity. Nothing has been awarded towards future prospects. Learned counsel has placed reliance on the following judgment :

- (1) Pappu Deo Yadav Vs. Naresh Kumar & ors.
(Civil Appeal No.2567 of 2020)
- (2) Kajal Vs. Jagdish Chand & ors.
AIR 2020 SC 776

(3) Jagdish Vs. Mohan & ors.
AIR 2018 SC 1347

(4) Basappa Vs. T. Ramesh
IV(2014)ACC240(SC)

3. Learned counsel or the respondent Insurance Company supports the impugned award and submit that, no interference therewith is called for.

4. The Tribunal granted compensation of Rs.65,000/-. Rs.50,000/- thereof is towards reimbursement of medical expenditure incurred. As such, only a sum of Rs.15,000/- has been awarded towards compensation on account of 15% of disability. No compensation has been awarded under any other head. In spite of there having been medical bills for more than Rs.50,000/-, the Tribunal limited the award on this count for Rs.50,000/- since the claimant averred in the petition to have incurred that much expenditure. According to the Tribunal, the Court cannot grant relief beyond the claim raised in the petition. These observations of the Tribunal run counter to the settled position of law. It is a duty of the Tribunal to grant just and adequate compensation, even if the same comes to a quantum beyond the one prayed for in the petition.

5. True, the Tribunal was justified in not granting compensation on account of loss of earning capacity since the claimant in her cross-examination admitted to have been earning a sum of Rs.100/- per day. It is her case that she would earn Rs.3000/- per month. The admission given by the claimant does indicate her to have not suffered loss of earning capacity.

6. In case of Pappu Deo Yadav, the Apex Court, in paragraphs No.16 and 17 of its judgment, has observed thus:-

16. In Raj Kumar Vs. Ajay Kumar [Raj Kumar Vs. Ajay Kumar, MANU/SC/1018/2020 : (2011) 1 SCC 343; (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161], this Court laid down the heads under which compensation is to be awarded for personal injuries : (SCC p. 348, para 6)

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

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, 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 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.

17. In *K. Suresh Vs. New India Assurance Co. Ltd.* [*K. Suresh v. New India Assurance Co. Ltd.*, MANU/SC/0908/2012 : (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279; (2013) 4 SCC (Cri) 638], this Court held as follows : (SCC p.276, para 2)

2. ... There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic

approximation. Therefore Section 168 of the Motor Vehicles Act, 1988 (for brevity “the Act”) stipulates that there should be grant of “just compensation”. Thus, it becomes a challenge for a court of law to determine “just compensation” which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.”

7. The certificate Exh.32 indicates the claimant to have suffered 15% of disability as under :-

“The case of fracture femur (Rt.) side. . .
. (Rt.) hip and knee”

The claimant was indoor patient for about a week and had to take treatment thereafter as outdoor patient. The quantum of medical expenditure incurred by the claimant indicates severeness of the injuries suffered by her. It has, therefore, to be assumed that, the claimant must have been rendered jobless for at least not more than eight months. Assuming her income to be at Rs.3000/- per month, she is, therefore, granted a sum of Rs.24,000/- towards loss of income for this period. There are further medical bills which have not been taken into consideration by the Tribunal for the reasons stated above. On this count, the claimant is awarded a sum of Rs.10,000/-. For conveyance, diet and miscellaneous expenditure, I propose to grant a sum of

Rs.40,000/-. While for pain and sufferings, a sum of Rs.25,000/- is granted. This amount is granted in addition to what has already been granted by the Tribunal.

8. As such, the impugned award needs to be modified as under :

The respondent Insurance Company shall pay the appellant - claimant a sum of Rs.1,40,000/- with interest thereon @ 6% p.a. from the date of petition to the date of payment of the entire amount (including the amount paid under NFL) and the one which has already been paid pursuant to the impugned award).

First Appeal is disposed of accordingly.

(R. G. AVACHAT)
JUDGE

fmp/-