

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 83 OF 2006

Premnath s/o Sopan Mannade,
Age : 32 years, Occu: Mason,
R/o : Ambulga (vis) Tq. Nilanga,
Dist. Latur

...Appellant
Orig. Claimant

Versus

1. Venkatrao Sadashiv Patil
Age Major Occu. Business
R/o Ambulga Tq. Nilanga
Dist. Latur
2. The New India Assurance Company
Ltd. Through Branch Manager, Latur.
3. Madhav s/o Venkati Patil,
Age 26 years, Occ. Driver
R/o Ambulga (vish) Tq. Nilanga,
Dist. Latur.
4. Dhanaji s/o Digambar Mane,
Age Major Occ. Driver,
s/o Madansuri Tq. Nilanga,
Dist. Latur
5. Gajanan s/o Madhavrao Aghen
Age Major Ocu. Business
R/o Ram Nagar, Jalna.
***(Appeal abated as against
respondent Nos. 4 and dismissed
as against respondent No. 5 as per
order of Court dated 09.09.2008)***
6. Ram Apparao Mane,
Age Major, Occu. Business,
r/o Madansuri Tq. Nilanga,
Dist. Latur

...Respondents

Mr R.R. Deshmukh h/f Mr R.B. Deshmukh for Appellant
Mr M.M. Ambhore, Advocate for Respondent No.2
Mr Swapnil D. Joshi h/f Mr Amit S. Deshpande for
Respondent Nos. 1 and 3

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 26.10.2021

PRONOUNCED ON : 21.12.2021

JUDGMENT :

1. This appeal is directed against the impugned judgment and award dated 17.8.2005 passed by the Ad hoc Additional District Judge and Ex Officio Member, M.A.C.T. Nilanga in M.A.C.P.No.248/1999.

2. The appellant/original claimant has filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal on account of injuries caused to him in the motor vehicle accident dated 30.12.1998. According to the appellant, he was travelling in a jeep bearing registration no. MH-21-A-8027. On 30.12.1998 at about 5.20 p.m., the jeep was proceeding from Kasar Sirsi to Hadoli (Ambulga) Vishwanath. The jeep reached near village Ramling (Mudgad) at about 5.30 p.m. Another jeep bearing no. MH-16-C-7228 came from opposite direction driven in a rash and negligent manner and gave dash to the jeep bearing no. MH-21-A-8027 wherein claimant was travelling. The appellant sustained serious injuries to his both the legs. Appellant's both the legs below knee are amputated because of crush injuries. He thereby suffered 100% permanent disability. He was doing the job of mason and earning Rs.100/- to Rs. 150/- per day. He sought compensation of Rs. 14,65,000/-. However, he restricted his claim to Rs.5.00 lakhs.

3. The Tribunal, after considering the rival pleadings of the parties and evidence on record was pleased to allow the claim of the appellant

partly by holding respondents no.1 to 3 liable jointly and severally and directed to pay compensation of Rs.2,10,500/- (inclusive of NFL amount) with interest @ 9% per annum from the date of institution of the claim till realisation of the amount. The petition came to be dismissed against respondents no.4, 5 and 6.

4. Feeling aggrieved by the diminutive amount of compensation awarded by the Tribunal, the original claimant has preferred this appeal by taking aid of Section 166 of the Motor Vehicles Act, 1988.

5. Heard Mr R.R. Deshmukh, learned Counsel for appellant/original claimant, Mr M.M. Ambhore, learned Counsel for respondent no.2 and Mr Swapnil D. Joshi, learned Counsel for respondents no.1 and 3.

6. The appeal is abated against respondent no.4. The appeal came to be dismissed against respondent no.5. Respondent No. 6 though served remained absent.

7. Mr R.R. Deshmukh, learned Counsel for the appellant/original claimant vehemently submitted that the tribunal has committed an error both in facts and law in awarding the compensation to the extent of Rs.2,10,500/-. The tribunal has committed an error in making observations that the income stated by the claimant is very much exaggerated without determining what was the actual income of the claimant. The tribunal has not even considered the minimum wages prevailing at the relevant time fixed by the Government. The tribunal has

determined the compensation of Rs.2,10,500/- without any base. There was no reason for the tribunal to reject the claim of the claimant when it is a case of 100% disability. The tribunal has not considered the loss of 100% earning capacity coupled with other factors. Mr Deshmukh urged to enhance the compensation by placing reliance on the following citation :

Jakir Hussein Vs. Sabir and Ors.,
reported in **(2015) 7 SCC 252**

8. Mr Ambhore, learned Counsel for respondent no.2 supported the findings recorded by the tribunal. He submitted that the compensation awarded by the tribunal is just and reasonable having regard to the facts of the case and evidence on record. It is not a case of 100% permanent disability and loss of income.

9. Mr Swapnil Joshi, learned Counsel for respondents no.1 and 3 argued on the similar lines.

10. The facts of the accident and injuries caused to the appellant in the motor vehicle accident occurred on 30.12.1998 are not much disputed.

11. The center of dispute is about permanent disability and loss of earning capacity of the appellant.

12. I have gone through the evidence of appellant/claimant as well as treating doctor (PW-2) Dr. Jagdish Agroya. It is evident from the testimony of Dr. Agroya that appellant was admitted in hospital with history of injuries caused to him in the accident. The appellant was treated in his

hospital. Both the legs below knees of the appellant came to be amputated. According to Dr. Agroya, the appellant is suffering from 60% disability due to accidental injuries. On that basis, the tribunal has assessed the quantum of future loss of income at Rs.1,50,000/- without giving any details. The tribunal though observed that both legs below the knees of the claimant are amputated and he is unable to do any work as a labour, the tribunal has not applied multiplier method and committed an error in awarding less compensation. In case of **Anant s/o Sidheshwar Dukre Vs. Pratap Zhamnnappa Lamzane & Anr.**, reported in **2018 ALL SCR 1814**, it is held by the Honourable Supreme Court that in cases of permanent disability and loss of earning capacity, compensation needs to be assessed by applying multiplier method. It is incorrect to award compensation in such injury claims by awarding compensation in lumpsum.

13. In the present case, the Member, M.A.C.T. erroneously made departure from the multiplier method and granted a lumpsum amount of compensation. That error needs to be corrected in the appeal.

14. When there is medical evidence clearly showing that both the legs of the appellant below knees are amputated, it is a case of 100% loss of functional ability even in absence of 100% physical disability. Even though Dr. Agroya has determined permanent disability of the appellant at 60%, it is a case of 100% loss of functional ability of the appellant. He was doing a job of mason and because of amputation of both legs below knees, he is not in a position to discharge the work as mason and

deprived of his income. It is a loss of career as a result of accident. He was a skilled labour (mason). By looking to the skill labour work of appellant/claimant, it would be just and proper to accept his income at Rs. 100/- per day. In the year 1998, he must be earning in the range of Rs. 100/- to Rs. 150/- per day according to minimum wages prevailing at the relevant time.

15. Mr R.R.Deshmukh, learned Counsel for the appellant has relied upon the citation in case of **Jakir Hussein** (supra) wherein the Honourable Supreme Court has held that though the claimant is suffering from permanent disability 30% and 55%, the tribunal cannot overlook that it is a case of 100% loss of functional ability.

16. In case of **Raj Kumar Vs. Ajay Kumar and Anr.** reported in **AIR Online 2010 SC 125**, the Hon'ble Supreme Court has laid down the parameters for awarding compensation in personal injury cases as under :-

- **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)

17. The case in hand is not a routine personal injury case. It is a case of amputation of both legs below knees and it is a case of loss of 100 % earning capacity. As such, the compensation needs to be assessed by applying multiplier method.

18. It is further held by the Hon'ble Supreme Court in case of ***Raj Kumar*** (supra) that while determining the compensation in a case of permanent disability, no need to deduct 1/3 amount out of income towards personal and living expenses. The age of appellant was 25 years at the time of accident. Multiplier of 17 needs to be applied as per citation in the case of ***Sarla Varma & Ors vs Delhi Transport Corp.& Anr. reported in (2009) 6 SCC 121.***

19. Even though the appellant/original claimant has restricted his claim at Rs. 5,00,000/- due to his financial constraint and payment of court fees, he is entitled to get just and fair compensation in order to enjoy his normal life. This means that he is to be compensated for his inability to lead full life, his inability to enjoy those normal amenities which he would have enjoyed, had he not met with an accident.

20. Having regard to the above reasons and discussion and in view of the legal position made clear by the Hon'ble Supreme Court in above referred two citations, it is a case of 100% loss of functional ability. Certainly, the compensation needs to be assessed on the basis of multiplier method coupled with other factors. Accordingly, the compensation is reassessed as under :

Head	Compensation awarded
i) Income	Rs. 3,000/- p.m.
ii) Future prospectus (40 % of income)	Rs. 1,200/-
iii) Net income	Rs. 4,200/-
iv) Multiplier	17
v) Loss of income Rs. 4,200 p.m.X12 = Rs.50,400/- per year X 17 = Rs. 8,56,800/-	
Vi) Total Compensation	Rs. 8,56,800/-
vi) Less amount of compensation awarded by M.A.C.T. Rs. 2,10,000/- (Rs. 8,56,800/- 2,10,000/- = Rs. 6,46,800/-	Rs. 6,46,800/-
Enhanced amount of compensation	Rs. 6,46,800/-

21. The appellant/original claimant is entitled to get above said modified amount of compensation after deducting earlier payment if any with interest @ 6% per annum within a period of two months from the date of this order. In case of failure, the appellant/original claimant is entitled to get interest on enhanced compensation with interest @ 6% per annum.

22. Having regard to the above reasons and discussion, I am of the view that the findings recorded by the Member, Motor Accidents Claim Tribunal, Nilanga, Dist. Latur need to be corrected by making interference in this appeal. The impugned Judgment and award stands modified accordingly.

23. For the reasons stated above, the appeal needs to be allowed as under :-

ORDER

- (I) The Appeal stands allowed.
- (II) Respondent Nos. 1 to 3 shall be liable to pay compensation of Rs. 8,56,800 (Rupees Eight Lakh Fifty Six Thousand and Eight Hundred Only) inclusive of NFL amount to the appellant/original claimant. The payment made earlier by the respondents/original opponents with interest if any, be deducted from the said amount. After deducting that amount, enhanced amount of compensation be paid to the appellant/claimant within a period of two months from today.
- (III) If the respondent Nos. 1 to 3 failed to pay enhanced compensation within a period of two months from today, the appellant/original claimant is entitled to get interest thereon @ 6% per annum till its full realization.

- (IV) The appellant/original claimant shall deposit deficit court fees with the Registry.
- (V) Award be drawn up accordingly.
- (VI) No order as to costs.
- (VII) In view of the above, the appeal stands disposed of.
- (VIII) The Civil Application, if any, also stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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