

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2187 OF 2017

Shri. Sampat Bhagwan Andhale,
 Age 33 years, Occu. Nil,
 R/o. Nimbodi (Devi-Nimgaon)
 Taluka Asti, District Beed.

.. Appellant
 (Original claimant)

Versus

1. Shri. Ranveer Singh s/o. Ramniwas Yadav,
 Age Major, Occu. Business,
 R/o. Sakatpura (Bawad), Taluka Mundawar,
 District Alwar (Rajasthan)
 (Owner of the truck no. HR55G-3960)

2. The Reliance General Insurance Co. Ltd.,
 Through its Manager,
 On HDFC Bank, Station Road,
 Ahmednagar.

.. Respondent
 (Original Respondents)

...

Mr. Avinash D. Aghav, Advocate for Appellant
 Respondent No.1 served through his brother
 Mr. Aniruddha S. Usmanpurkar, Advocate for Respondent No.2

...

CORAM : ANIL S. KILOR, J.

DATE : 8th APRIL, 2021

ORAL ORDER :-

The appellant, who is the original claimant in Motor Accident Claim Petition No. 461 of 2011 raising a grievance in this appeal against the Judgment and Award, dated 04-07-2016, passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar, on the ground that his case of loss of earning capacity to the extent of 100% was not considered and arrived at erroneous conclusion about his monthly income.

2. I have heard the learned counsels for the respective parties.

3. Brief facts of the present case are as under -

That, on 24-05-2011, the claimant was travelling in ST Bus No. MH-20-D-9892 as a passenger and he was seated on the backside of the ST Bus window. The said ST Bus when came in the vicinity of Kadegaon, Ahmednagar, one truck bearing No. HR-55-G-3960 came in rash and negligent manner and suddenly gave dash from backside. In the said accident, the claimant sustained serious and grievous injuries, like compound fracture, Humerus shaft left, fracture left radius ulna, fracture left elbow, fracture left olecrenon, amputation left little finger, head injury, etc. due to which, he caused permanent physical disability to the extent of 40%.

. It is the case of the claimant that he was working as a driver on the heavy container and because of permanent physical disability, now he cannot work as a driver and he has lost 100% earning capacity due to impact of accident.

. The respondent-insurance company opposed the claim petition and denied that the driver of the truck was driving in rash and negligent manner and due to his fault, the accident occurred. It is also denied that claimant was serving as driver and thereby earning Rs.10,000/- per month.

. The claimant, in order to prove his case, examined himself and witness No.2 Dr. Vijay Karbhari Patil and witness No.3 Ashok Shirsath, who was working as Manager in 'Prathmesh Trasnport'.

. The learned Tribunal, after scrutinizing the evidence oral as well as documentary on record and also considering the Judgment cited by both the parties and relevant provisions of law, partly allowed the claim and held that the owner of the truck and the insurance company are liable to pay Rs.3,02,500/- to the appellant jointly and severally with interest @ 9% p.a. from the date of petition i.e. from 02-07-2011 till payment of entire amount.

. The appellant-claimant feeling dis-satisfied with amount of compensation, has filed present appeal for enhancement of amount of compensation.

4. Mr. Aghav, learned counsel appearing for the claimant-appellant submits that though sufficient evidence was produced by the claimant that he has suffered permanent physical disability to the extent of 40% and because of the impact of the same, he has lost his 100% capacity to earn, however, the learned Tribunal has erroneously considered loss of earning capacity to the extent of 30%.

5. Learned counsel for the claimant further submits that though, the certificate issued by employer Transport company is produced on record and same was exhibited, wherein, the income of the claimant was

shown Rs.10,000/- per month and in addition though claimant has led oral evidence by examining manager of the said Transport company, the learned Tribunal has not considered the same while determining the annual income of the claimant. He, thus, submits that the learned Tribunal has committed error while determining the total amount of compensation by not taking into consideration monthly salary of Rs.10,000/-.

6. On the other hand, Mr. Usmanpurkar, learned counsel appearing for the respondent No.2 - Insurance company opposes the present appeal on the ground that though the claimant has examined Doctor on the point of loss of earning capacity, he was not allowed to cross-examine, and therefore, the evidence of Doctor, witness No.2 of the claimant, cannot be considered for the purpose of deciding loss of earning capacity.

7. He, further, submits that renewal of license by the claimant after accident shows that still he is having capacity of driving vehicle as a driver and the said fact is sufficient to show that the claimant has not lost 100% earning capacity. It is submitted that the learned Tribunal after considering oral as well as documentary evidence has rightly considered the loss of earning capacity to the extent 30% and, therefore, according to him, this Court may not interfere into the said findings.

8. As regards the income of the claimant, learned counsel for respondent No. 2 – insurance company submits that in the cross-

examination of witness No. 3 - Ashok Shirsath, he has admitted that he was working as Manager in 'Prathmesh Transport' from last two years and further he has admitted that no record was produced before the Court showing the monthly income of the claimant. The learned counsel for the respondent No.2 - Insurance company, therefore, submits that the approach of the learned Tribunal while determining the annual income of the petitioner was correct and no error is committed by the learned Tribunal.

9. To consider the rival contentions of the parties, I have gone through the record and perused the relevant documents and Judgment and Award of the learned Tribunal.

10. As regards first contention of the learned counsel of the appellant that due to impact of the accident, the claimant has suffered permanent physical disability to the extent of 40% and, because of the same, now he is not able to drive four wheeler - light vehicle or heavy vehicle, and therefore, it has to be considered as loss of 100% earning capacity. The said contention of the learned counsel for the claimant cannot be accepted in absence of evidence on record.

11. It is revealed from the record that though the Doctor was examined by the claimant and though he has stated in the examination in chief at Exhibit-27 that on the basis of injuries sustained by the claimant, he cannot drive two wheeler or light vehicle - four wheeler, the said contention cannot be considered due to the fact that the claimant himself

has filed application at Exhibit-30 *inter-alia* stating therein that the Doctor cannot be made available for cross-examination. Thus, the fact remains that the Doctor, who entered into witness box, in favour of claimant to prove his loss of earning capacity was not made available for cross-examination and in absence of cross-examination the evidence of the said witness cannot be considered.

12. The importance of cross-examination has been considered by the Constitution Bench of the Supreme Court of India in ***Kartar Singh Versus State of Punjab***¹, wherein it has been held that, it is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are :

- (1) *to destroy or weaken the evidentiary value of the witness of his adversary;*
- (2) *to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;*
- (3) *to show that the witness is unworthy of belief by impeaching the credit of the said witness;*

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.

1 (1994) 3 SCC 569

13. Thus, after discarding the oral evidence of Doctor for the above referred reasons, if the fact is considered that the claimant has renewed his license, I do not find any fault in the findings arrived at by the learned Tribunal that the claimant has lost his earning capacity to the extent of 30%. In that view of the matter, the contention of the claimant that he has lost earning capacity to the extent of 100%, is rejected.

14. As regards the second contention that though the claimant has produced certificate of monthly salary issued by the employer 'Prathmesh Transport', *inter-alia*, stating the monthly income of petitioner is Rs.10,000/- and though the Manager was examined in support of the salary of the claimant, it was not considered and discarded the same. The record reveals that the certificate issued by 'Prathmesh Transport', dated 21-11-2014, is on record, which certifies that the claimant was receiving Rs.10,000/- towards salary.

15. The claimant was working as driver on heavy truck and container. The oral evidence of the Manager supports the case of the claimant that he was receiving Rs.10,000/- as monthly salary. Though, in the cross-examination he has deposed that he has not brought any record of the transport to show that said transport company used to pay Rs.10,000/- to the claimant, that will not help the Insurance company to say that the claimant was not receiving Rs.10,000/- as monthly salary.

16. The submissions of the learned counsel for the insurance company that the Manager, who was examined at Exhibit-31 was in the said company from last two years, whereas, the claimant was working from year 2004 to 2011, and therefore, that Manager cannot be considered as a witness, who can depose in support of salary of the claimant.

17. It is settled law that in the case of motor accident claim petition strict rule of evidence is not applicable, whereas, the Court has to do some guess work and decide the matters on the basis of preponderance of probability. Moreover, the income, which has to be considered by the Tribunal or the Court, of the person injured or deceased, is on the date of the accident. Therefore, in the instant matter, the accident occurred in the year 2011 and in the deposition of Manager of the Transport Company has categorically deposed that from year 2004-2011 the claimant used to receive Rs.10,000/- as salary. The said statement cannot be ignored only on the ground that the manager was examined on 06-07-2015 and he was working in the said company for two years before recording his deposition particularly when the certificate of the employer-transport company is on record, certifying his salary as Rs.10,000/- per month.

18. In that view of the matter, I have no hesitation to hold that the claimant was earning Rs.10,000/- per month and to establish the said fact the claimant has brought on record sufficient oral as well as documentary evidence.

19. Having held that the monthly salary of the claimant was Rs.10,000/-, it is necessary to modify the Judgment and Award to the extent of amount of compensation to be paid by the owner and the insurer, jointly and severally. Thus, the appellant is entitled to get the amount towards permanent disability 30%, medical bill and medicines, travelling charges, special food, special food, attendant, pains and suffering as per following chart :-

Sr.No.	Heads		Amount (Rs.)
1	Permanent Disability 30 % [Considering salary Rs.10,000/- p.m. (3000 x 12 x 17)]	..	6,12,000/-
2	Medical Bill and Medicines	..	1,29,917/-
3	Travelling	..	4,000/-
4	Special Food	..	5,000/-
5	Attendant	..	4,000/-
6	Pains and Suffering	..	1,00,000/-
	Total	..	8,54,917/-
	The compensation awarded by Tribunal	..	3,02,500/-
	Payable Enhanced Compensation Amount (along with interest @ 9% p.a.)	..	5,52,417/-

20. In the aforesaid background, I pass the following order :-

ORDER

- I) The First Appeal is partly allowed.
- II) The Judgment and Award passed dated 04-07-2016 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 461 of 2011 is hereby partly modified as under -

(a) The respondents are directed to pay the enhanced amount of compensation to the tune of Rs.5,52,417/- along with interest @ 9% per annum from the date of filing of petition till its realization, within a period of three months.

III) No order as to cost.

(ANIL S. KILOR)
JUDGE

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