

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 399 OF 2008

Amol s/o Sheshrao Mendhe,
Age 21 years, Occ : Private Job,
R/o. Plot No.43, Rajendra Nagar,
Near Nandavan, Nagpur. .. Appellant

.. Versus ..

1. Gulshanlal Sahani,
Age-Major, Occ: Business, owner
of Truck/Tanker MTG-2570,
R/o. 523, Clerk Town, Nagpur.
2. National Insurance Company Ltd.,
Branch at Darshan Complex, Motor
Stand Road, Kamptee, Tah. Kamptee,
District-Nagpur. .. Respondents

.....
Mr. R.S. Charpe, Advocate for the appellant,
Mr. Ashish Paunikar, Advocate for respondent no.2.
.....

CORAM : M.S. SONAK, J.
DATED : 07.12.2021.

JUDGMENT

Heard learned counsel for the parties.

2. This appeal is directed against the judgment and award dated 6.12.2007 made by the Motor Accident

Claims Tribunal, Nagpur in Claim Petition No.947/1999, to the extent it awarded compensation of only Rs.25,000/- as against the claim of compensation of Rs.75,000/-.

3. The claim petition was instituted by Amol then aged 12 years for the injuries sustained by him on account of a vehicular accident that took place on 25.6.1995 at about 8.30 pm. Amol had pleaded that when he was passing by Manav Mandir, Truck-Tanker bearing registration No.MTG-2507 owned by respondent no.1 and insured by respondent no.2 came from the opposite side at high speed and dashed him. A driver of this truck drove the truck in a rash and negligent manner and after dashing Amol, ran away from the spot. Amol was shifted to hospital and a criminal case was registered against the driver of the offending vehicle.

4. A Tribunal, by the impugned award, has granted Amol compensation of Rs.25,000/-. Further, the Tribunal has denied Amol interest for the period between 16.9.1999 and 20.10.2004 on the ground that Amol was

responsible for delaying the proceeding during this period.

5. Mr. Charpe, learned counsel for the appellant, submitted that compensation of at least Rs.75,000/- should have been awarded by the Tribunal based on the evidence on record. He submitted that the aspect that Amol lost a year has been ignored. He submitted that no proper compensation has been granted towards the pain and suffering, marriage prospects, medical expenses, attendant charges, loss of income, and the prospect of suffering permanent disability of 10% all his life.

6. On this, Mr. Paunekar, learned counsel for respondent no.2, defended the impugned order by stating that compensation has been properly determined. He pointed out that there was no evidence on record and it is only by some guesswork that Rs.25,000/- has been awarded. He, therefore, submitted that this appeal may be dismissed.

7. Having considered the rival contentions as well as the material on record, in my judgment, the

compensation will have to be enhanced to Rs.50,000/- as against Rs.25,000/- awarded by the Tribunal for reasons indicated hereafter.

8. In this case, there is no dispute or rather there is ample evidence that establishes that the appellant on account of the injuries sustained by him, has suffered 10% disability to his leg. This disability is something that the appellant will have to live with, throughout his life. There is evidence that the appellant was hospitalized for about a month. From the nature of the injuries sustained by the appellant and the fact that he was required to be admitted in the hospital for almost a month, the inference that the appellant lost an academic year, will not be quite unreasonable. The Tribunal erred in disbelieving the case of the appellant simply because he was not in a position to produce his mark-sheet or to demonstrate the reduction of his marks after the accident.

9. Similarly, the Tribunal was not justified in downplaying the physical disability the admitted disability

of 10% suffered by the appellant, simply because the appellant admitted in his evidence that he can walk and has also secured a job in a private company, earning Rs.2,500/- per month.

10. Similarly, no proper compensation has been awarded for the pain and suffering and medical expenses. True, in this case, there was no documentary evidence produced about the medical expenses, special diet, conveyance charges for visits to the hospitals. However, having regard to the nature of the injuries sustained by the appellant, such expenses are bound to have been incurred by the appellant. Therefore, some reasonable compensation should have been awarded by the Tribunal on this score as well.

11. The Tribunal, in this case, has also not considered the aspect of marriage prospects. Mr. Charpe, learned counsel for the appellant, relied on **Ibrahim .vs. Raju, 2011 (10) SCC 634**, in which the Hon'ble Supreme Court has held that the aspect of the reduction of the claimant's marriage prospects is also required to

be considered and some compensation awarded. The Tribunal was also required to consider that 10% disability affected the ability of the appellant for obtaining a better job or discharging duties, which he would have otherwise been competent to discharge.

12. Upon analyzing the evidence on record and taking into consideration all the aforesaid aspects, the compensation amount is enhanced from Rs.25,000/- to Rs.50,000/-. In my judgment, this will represent the just compensation payable in this matter.

13. There is no case made out for any further modifications in the impugned award. The Tribunal has given reasons for denying the appellant, interest for the period between 16.9.1999 to 20.10.2004. The Tribunal has referred to the several adjournments applied for by the appellant during this period that delayed the proceedings.

14. Therefore, this appeal is partly allowed and the impugned award is modified by enhancing the compensation amount from Rs.25,000/- to R.50,000/-.

The rest of the directions in the impugned award are maintained. The insurance company must now pay/deposit the balance compensation together with interest in this Court within 2 months so that the appellant can withdraw the same.

15. There shall be no order for costs.

[M.S. Sonak, J.]

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