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

FIRST APPEAL NO. 340 OF 2020

Shekhar s/o Govindrao Khunkar,
aged about 59 years, Occ. -NIL,
R/o Savangi, Post Chinchmandal, Tq.
Maregaon, District – Yavatmal.

.... **APPELLANT**

// **VERSUS //**

1. Abdul Salim S/o Abdul Rauf,
aged about : 34 years, Occ. Driver,
R/o Besides RTO Officer, Nagpur
Road, Yavatmal, Taluka and
District Yavatmal.

2. Mukesh s/o Deepchandji Rai,
Aged about : Major, Occ. Owner
of Tipper, R/o Post Kalamb Chowak,
Kumbhapura, Yavatmal, taluka
and District Yavatmal.

3. Oriental Insurance Company Limited,
Policy Issuing Office Divisional Officer
No.2nd, Plot No. 8, 1st floor, Hindusthan
Colony, Wardha Road, Ajani Square,
Nagpur. Through Branch Manager,
at 'Vishwas' Vir Wamanrao Chowak,
Datey College road, Yavatmal, Taluka
and District Yavatmal.

.... **RESPONDENTS**

Shri V.D. Awchat, Advocate for Appellant.
Respondent nos. 1 and 2 are served.
Shri D.N. Kukday, Advocate for Respondent no.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 03/03/2021.

JUDGMENT :

Heard finally, with consent of the parties.

2. Being aggrieved by the quantum of compensation awarded by the Claims Tribunal, the Appellant who was the Claimant in the M.A.C.P. No.124 of 2017 has filed this appeal under section 173 of the Motor Vehicle Act, 1988 (for short 'the M.V. Act').

3. The Appellant shall be hereinafter referred to as the 'Claimant' and the Respondent No.3 shall be referred to as 'Insurance Company'.

4. It was the case of the Claimant that, on 24/03/2017, while he was proceeding from Khairi to Kosara road as a pillion rider on motorcycle No. MH-29-AQ-7468, a truck Tata Tipper bearing registration No. MH-29-T-2930 dashed against the motorcycle and as a result he sustained grievous injuries resulting in permanent

disablement. The Claimant stated that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The Claimant was 56 years of age. He claimed that he was a farmer and earning Rs.20,000/- per month. The Claimant therefore, filed a claim petition, claiming total compensation of Rs.2,00,000/- towards pecuniary and non-pecuniary loss.

5. The respondent Nos.1 and 2 denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. They also denied the age, occupation and monthly income of the Claimant. The Appellant/Insurance company also took a defence of breach of terms and conditions of the policy and denied his liability of indemnifying the insured.

6. The Tribunal after considering the evidence on record, recorded the finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal also held that the Claimant had suffered grievous injuries resulting in permanent disablement at 60%. The Tribunal considered the functional disability at 20% and on the basis of notional income of Rs.5000/- per month, earning capacity and on applying multiplier of 9, the Tribunal assessed loss of earning capacity at Rs.1,08,000/-. The

Tribunal also awarded compensation of Rs.50,000/- towards medical expenses, Rs.10,000/- towards pain and suffering, Rs.10,000/- towards special diet and Rs.15,000/- towards loss of actual income during the period that Claimant was under treatment. The tribunal therefore, awarded total compensation of Rs.1,93,000/-. This judgment and Award is under challenge in this appeal.

7. Shri V.D. Awchat, learned counsel for the Claimant submits that the Claimant who is an agriculturist has suffered 60% disablement. He submits that the Tribunal was not justified in considering functional disability at 20% for the purpose of assessing loss of income. Learned counsel for the Claimant further submits that though the Claimant had produced medical bills to the tune of Rs.59,400/-, the Tribunal has awarded compensation of Rs.50,000/- towards medical expenses without assigning any reasons for discarding medical bills for Rs.9400/-. Learned counsel for the Claimant therefore submits that the compensation awarded by the Tribunal is not 'just compensation' and hence, the same needs to be enhanced.

8. Learned counsel for the Respondent No.3/Insurance Company submits that the evidence of DW-2 Yeshwant, Surgeon visa-a-viz the discharge certificates at Exh.43 and 45, clearly indicate that the

Claimant was perfectly normal at the time of his discharge. He submits that the Claimant was examined about a year after the accident for assessing permanent disability and as such, it is not possible to hold that the injuries referred to in the disability certificate relates to the injuries sustained in the accident. Learned counsel for the Respondent/ Insurance Company submits that the Tribunal has considered all these aspects and has rightly considered functional disability at 20% for the purpose of computing loss of earning capacity.

9. I have perused the record and considered the submissions advanced by learned counsel for respective parties.

10. The only question which falls for consideration is whether the compensation awarded by the Tribunal can be considered as 'just compensation'.

11. In the case of ***Raj Kumar v/s. Ajay Kumar and anr. reported in (2011) 1 SCC 343*** , the Hon'ble Supreme Court has laid down the following general principles for computation of compensation in injury cases :-

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

Pecuniary damages (Special damages)

(i) Expenses relating to treatmeIn the case of Raj Kumar v/ s. Ajay Kumar and anr. ***reported in (2011) 1 SCC 343*** *, the Hon'ble Supreme Court has laid down the following general principles for computation of compensation in injury cases :-*

"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."nt, 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).

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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."*

12. In the instant case, the evidence on record reveals that, the Claimant was 56 years of age. He was an agriculturist. The Tribunal has considered his income as Rs.5000/- per month. There is no serious dispute over these findings. The main grievance is regarding assessment of future loos of income. The evidence of A.W.-2 Yeshwant, Orthopedic Surgeon, reveals that the Claimant had suffered multiple fractures a rib with hemopneumothorax with spinal cord contusion with paraparesis. He was treated with incertion of intercostal drain. Paraparesis was treated with steroids and conservative treatment as per Neuro Surgeon's opinion. In his cross-examination, this witness has stated that at the time of discharge, the patient was not suffering from Hemopneumothorax.

13. The medical certificates reveal that the Claimant had suffered fracture of 11^{th} rib as well as fracture of posterior element of D10 and anterior ends of the lower ribs on both sides. A.W.-3 - Dr.

Rangrao Ade who is an Orthopaedics Surgeon has also deposed that the Claimant had fracture rib 8^{th} and 11^{th} on his left side with haemopnumothorax with fracture of D-10 vertebra with survical spine injury with cord contusion with paraparesis (both lower limbs). This witness has deposed that on radiological examination, he had noticed that the Claimant had weakness of both lower limbs with Grade III power with spasticity with hypothesia of both lower limbs. The patient was advised physiotherapy. He has stated that the Claimant had once again visited his hospital on 10/08/2018. The doctor has opined that the Claimant had 60% permanent disability. He is not able to do any physical work. He has denied the suggestion that the percentage of permanent disability would reduce after physiotherapy treatment.

14. The medical evidence thus clearly indicates that, apart from Hemopneumothorax, the Claimant had also sustained fracture of vertebra. The discharge certificate at Exh. 43 also shows that there was pelvic compression and weakness of lower limbs. The injuries mentioned by PW-3 in the disability certificate relate to the injuries sustained by the Claimant in the accident and refered to in the medical certificate at Exh. 43.

15. It is to be noted that the Tribunal has disbelieved the

evidence of PW-3 mainly on the ground that the Doctor was not aware that the Claimant was a farmer, and that he has not considered the nature of work while assessing the permanent disablement. The learned Tribunal has further held that the Claimant has only sustained paraparesis which can be cured by physiotherapy and has thus doubted the assessment of percentage of permanent disablement. As noted above, there is no dispute that the Claimant had suffered fractures of right rib and vertebra 10 and spinal injury as a result of the accident. The doctor who had assessed the permanent disablement is an Orthopedic Surgeon. There was no reason to doubt his competency in assessing the permanent disability and or to doubt his statement that the percentage of disability would not be reduced with physiotherapy. The Tribunal was of therefore, not competent to substitute its opinion when the Expert witness had examined the patient and assessed the permanent disability based on clinical examination as well as other medical records.

16. The Claimant is a farmer by profession, the medical evidence shows that he is unable to do physical work due to the extent of permanent disablement. Considering this fact, the Tribunal was not justified in computing loss of earning capacity on the basis of functional disability at 20%.

17. The medical bills at Exh.28 indicate that the Claimant had incurred expenditure of Rs.59,400/- towards medical expenses. The Tribunal has awarded compensation of Rs.50,000/- and has not assigned any reasons for discarding the bills to the tune of Rs.9,400/-.

18. In view of the above facts and circumstances, the compensation awarded by the Tribunal cannot be considered to be 'just compensation'.

19. The income of the Claimant is held to be Rs.5000/- per month which works out to Rs.60,000/-. The Claimant was 56 years of age and hence, applying multiplier of 9 and considering functional disability at 60%, loss of earning capacity works out to Rs.3,24,000/-. The Claimant is also entitled for medical expenses of Rs.59,400/-. Considering the nature of injuries suffered by the Claimant, compensation awarded towards pain and suffering also needs to be enhanced to Rs.50,000/-. In addition to compensation of Rs.10,000/- towards special diet and Rs.15,000/- towards actual loss of income, the Claimant would also be entitled for compensation of Rs.25,000/- towards loss of amenities of life. The Claimant is therefore entitled for total compensation of Rs.4,83,400/- which is rounded off to Rs.4,85,000/-. Hence, the following order :

(a) The appeal is allowed.

(b) The Claimant is held to be entitled for compensation of Rs.4,83,400/- with interest at the rate of 7% per annum from the date of the petition till final realization.

(c) The Respondent No.3-Insurance company to deposit the balance amount with interest, within a period of three months before this Court.

(d) The Claimants shall pay deficit court fee within a period of three months, if any.

(e) The Claimant is entitled to withdraw the compensation along with accrued interest.

JUDGE

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