

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

FIRST APPEAL NO.1127/2010

Chandrakant Baburao Maske,
Aged 58 years, Occ.-Nil,
R/o.-Deudgaon, Nawegaon Bandh,
Tah.Morgaon, Dist-Gondia.

...APPELLANT

VERSUS

1. Smt. Papitarani K. Shikka,
R/o.-Shankar Nagar, Raipur, C.G.

2. The New India Assurance Co. Ltd.,
1st Floor, Patni Bhavan, Gandhinagar, Nagpur.

...RESPONDENTS

Mr. Asgar Hussain, Advocate for appellant.
Mr. A.H. Patil, Advocate for resp. no.2.

CORAM : PUSHPA V. GANEDIWALA, J.
Reserved on : 06-10-2021.
Pronounced on : 23-11-2021.

J U D G M E N T

The injured/claimant takes exception to the judgment and award dated 06-11-2009 passed by the learned Member of the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.241/2004, whereby the learned Member of the Tribunal awarded compensation of Rs. 56,830/- to the appellant/claimant with interest @ 7.5% per annum from the date of petition i.e. 23-01-2004 till realization. The

present appeal is filed for enhancement of compensation.

2. It is the case of the appellant/original claimant before the Motor Accident Claims Tribunal that on 08-11-2003, while he was riding motorcycle MH-35/E-9873 and was proceeding towards Deudgaon from Bhandara through National Highway No.6, a truck coming from opposite direction bearing No.CG-04/ZC-7265, being driven rashly and negligently and in high speed dashed him violently. It is stated that the appellant was thrown on the ground and sustained serious injuries, which included multiple fractures on his legs. The appellant was shifted to Government Medical College, Nagpur, where he was admitted from 08-11-2003 to 26-01-2004. The appellant sustained crush injury, with fracture of Supercondyle Femur, with fracture of both bone leg Grade III. He was operated upon his legs and after treatment he was declared permanently disabled at 44% by the Orthopedic surgeon of Medical College, Nagpur. It is stated that for around one year he was under the treatment of the doctors of Medical College, Nagpur.

3. It is stated that the appellant was in service in Bhandara District Jungle Kamgar Society on a monthly salary of Rs. 7000/- and the salary certificate is placed on record at Exhibit-53. The appellant

claimed Rs.25,000/- towards compensation.

4. By way an interim compensation towards 'no fault liability' the learned Member of the Tribunal has granted Rs. 25,000/- with interest @ 7.5 % per annum.

5. The respondent Insurance company in its written statement (Exhibit-11) resisted the claim of the appellant in toto by denying each and assertion, being false and fabricated. By way of specific pleadings, the respondent Insurance Company raised the defence of contributory negligence on the part of the appellant/claimant.

6. On the basis of rival pleadings of the parties, the learned Member of the Tribunal framed necessary issues and recorded evidence as adduced by the parties.

7. The appellant examined himself below Exhibit-31 and also examined one witness Suresh Parasram Sangewar on the point of salary of the appellant. The appellant has brought on record various medical papers including discharge and OPD cards and medical bills. The appellant has also brought on record Disability Certificate at Exhibit-47 issued by the Orthopedic surgeon, Government Medical College,

Nagpur indicating 44% permanent disability.

8. The respondent-Insurance Company preferred not to examine any witness.

9. The learned Member of the Tribunal on the basis of material on record and the submissions made on behalf of both the sides recorded the findings that the appellant suffered injuries and permanent disabilities in vehicular accident due to rash and negligent driving of Truck bearing No. CG-04/CZ-7265. The learned Member of the Tribunal directed the owner and the insurer of the offending vehicle to pay jointly and severally to the appellant the amount of compensation of Rs.56,830/- with interest @ 7.5% per annum from the date of petition i.e. 23-01-2004 till realization. The learned Member of the Tribunal awarded compensation under the following heads:

i	Medical expenses	Rs.11,830/-
ii	Conveyance & Special diet.	Rs. 5,000/-
iii	Compensation towards permanent disablement.	Rs. 30,000/-
iv	Pain and suffering.	Rs. 10,000/-
	Total compensation	Rs. 56,830/-

10. This impugned judgment is the subject matter of challenge by the appellant/claimant in the present appeal seeking enhancement

of the compensation. It is the grievance of the appellant that the learned Member of the Tribunal has failed to consider the loss of earnings and future earnings of the appellant due to the said accident. It is further the grievance of the appellant that he could not walk properly due to the injury suffered by him and he is required to walk with the assistance of a stick. Learned Counsel appearing on behalf of the appellant Mr. Asgar Hussain submitted that the learned Member of the Tribunal has completely ignored the fact that the appellant has lost his job due to disability. It is further submitted that the appellant was not allowed to join the duty due to his disability and therefore he was terminated from the job as not fit for the duty. Learned Counsel further submits that the learned Member of the Tribunal has arbitrarily come to a conclusion that the appellant has left the job on his own, which was totally uncalled for, as there was no evidence that he left the job voluntarily. On the contrary, it is submitted that there was a remark on his application for joining the duty that he was unfit for the job of Supervisor as it requires a lot of travelling. It is further submitted that the learned Member of the Tribunal has miserably failed to understand that the appellant was unable to secure fitness certificate as required by the Sanstha because he was not fit to do the said job. The appellant was on bed for around 15 months from the date of accident and therefore there was loss of salary of 15 months which should have been

compensated by the learned Member of the Tribunal. Learned Counsel also urged for granting compensation towards loss of income and the loss of capacity to earn. In support of his submission learned counsel relied on the judgments of Hon'ble Apex Court in the case of ***Raj Kumar vs Ajay Kumar and another***, reported in ***2011 ACJ 1*** and ***Anant son of Sidheshwar Dukre vs Pratap son of Zhamnnappa Lamzane and another***, reported in ***2018(10) Scale 130***.

11. *Per contra*, learned Counsel Mr. Patil, appearing on behalf of respondent no.2 Insurance Company submitted that the appellant had on his own volition remained absent from the duty. He was asked to produce fitness certificate. He failed to produce the same and left the job. Therefore, he is not entitled to claim compensation on account of loss of earnings.

12. I have considered the rival submissions and the material on record. The following point arises for consideration of this Court :

"Whether the appellant is entitled for enhancement in the amount of compensation?"

13. At the outset, the findings of the Tribunal with regard to the negligence of the driver of the offending vehicle truck bearing no.CG-04/ZC-7265 for the cause of accident has reached finality as the

same is not challenged by the respondent-Insurance Company. The only question for the consideration of this Court is whether the appellant is entitled for enhancement in compensation?

14. The learned counsel Shri. Asgar Hussain appearing for the appellant urged for enhancement in compensation in terms of the ratio laid down by the Apex Court in the case of ***Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343**. Per contra, the learned Counsel Shri. A. H. Patil appearing for the respondent Insurance Company while supporting the impugned judgment and Award of the Tribunal, does not dispute seriously, the entitlement of the appellant for the enhancement in the compensation in terms of the judgment in the case of **Ajay Kumar V/s Raj Kumar** (supra) and **National Insurance Company Limited vs Pranay Sethi and others**, reported in (2017) 16 SCC 680.

15. I have considered the rival contentions. The witness examined by the appellant to prove his salary deposed that the appellant was serving as a Secretary at Bhandara District Forest Labour Cooperative Society Federation, Bhandara and during the period from 25-11-1975 till the date of accident he worked with different societies which are affiliated to the aforesaid Federation and as per salary certificate Exhibit-53 his net salary was around Rs.6735/- per month.

16. Evidently, for two and half months i.e. from 08-11-2003 to 31-01-2004, the appellant was required to be admitted in the hospital for treatment. Thereafter for around one year he could not join the duties due to the injuries suffered by him. When he proposed to join the duties, he was asked to produce fitness certificate. As he failed to produce the same, he could not continue his job. On this aspect, the learned Member of the Tribunal has observed that the appellant on his own volition left the job and therefore he is not entitled to any amount of compensation towards future loss of earning.

17. The learned Member of the Tribunal has failed to consider the loss of earnings of the appellant during the period of treatment and loss of future earning capacity in terms of the disability certificate and having regard to the nature of his job. The appellant has proved with cogent evidence that he was earning net salary of Rs. 6735/- per month. It is not clear from the evidence on record that whether in the absence fitness certificate he left the job or he was not allowed to continue the job in the absence of fitness certificate. Be that as it may, the fact remains that due to the accident the physical condition of the appellant has not remained the same. The disability certificate indicates his permanent disability to the extent of 44%. His photograph appended to the disability certificate and the parts of the body to which

the injuries sustained, it appears that he sustained injuries towards his lower body. After undergoing medical treatment, the change which occurred to his body is that he is required to walk with the assistance of a stick. Beyond this he does not say anything about his disability. Medical certificate Exhibit-53 does not clearly show as to 44% permanent disability of the whole body or the part of the body. Considering his job as a Secretary in the societies affiliated to the aforesaid Federation, in the opinion of the Court, his functional disability can be computed to 20%. Now the question would, under which heads, the just compensation to the appellant is required to be calculated.

18. The Honb'le Apex Court in *Raj Kumar v. Ajay Kumar* (*supra*) laid down the following general principles relating to compensation in injury case:

“ The provision of the Motor Vehicles Act, 1988 (“the Act”, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of

such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64 : AIR 1970 SC 376] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)] .]”.

19. With regard to the various heads under which the compensation is to be calculated in injury cases, the Hon'ble Apex Court in said case laid down the following criterion:

"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 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."

20. In the case in hand, undisputedly, the appellant suffered permanent physical disability due to the motor vehicular accident. He had to undergo lot of pains and sufferings. He was also required to spend huge amount on medicines and other incidental expenses. The learned Member of the Tribunal has granted compensation on lower side. The compensation for the which the appellant is entitled to, may be calculated as under:

Net Income as per Salary Certificate Ex. 53	Rs. 6,735/-
Add 10% as per Pranay Sethi's judgment.	+ <u>Rs. 673/-</u>
	Rs. 7,408/-
Multiplied by 12 months.	x <u>12</u>
	Rs. 44,448/-
Multiplied by 11 (Multiplier)	Rs.4,88,920/-
(20% of Rs.4,88,920/- Permanent functional disability)	Rs. 97,784/-
Loss of earning during the period of treatment (15 months)	Rs.1,01,025/-
Actual medical expenses.	Rs. 11,880/-
Pain and suffering.	Rs.1,00,000/-
Future medical expenses.	Rs. 20,000/-
Loss of amenities.	<u>Rs. 20,000/-</u>
Total	Rs. 3,50,689/-

21. In view of the above, I allow this appeal and the impugned judgment and award is modified in the following terms :-

The appellant is entitled to receive compensation of Rs. 3,50,689/-which shall carry interest at the rate of 7.5%, from the date of petition to the date of payment. Needless to say, the release of the enhanced amount of compensation shall be subject to the payment of the deficit amount of court fees, if any. The appeal stands disposed of in the above terms.

JUDGE

Deshmukh