

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

FIRST APPEAL NO.1240 OF 2008

Mohan s/o Wamanrao Bakhade,
 Aged about 38 years,
 Occupation-Agriculturist,
 R/o. Shevati Jahagir,
 Tq. and Dist-Amravati.

.. Appellant
 (Ori. Claimant)

.. Versus ..

1] Abdul Gani Sheikh Lala,
 Aged about 58 years,
 Batch No. Not Known,
 R/o. Jamil Colony, Amravati,
 Tq. & Dist-Amravati.

2] Maharashtra State Road
 Transport Corporation,
 through its Divisional
 Controller, Amravati Division,
 Amravati, Tq & Dist. Amravati.

.. Respondents
 (Non-Applicants)

.....

Mr. Vinay Dahat, Advocate for the appellant,
 None for the respondents though served.

.....

CORAM: M.S. SONAK, J.
DATED: DECEMBER 08, 2021.

JUDGMENT

Heard Shri Vinay Dahat, the learned counsel for the appellant. The respondents though served have put in no appearance. Since this appeal of the year 2008, there is no point in adjourning the matter any further.

2. This appeal is directed against the judgment and order dated 28.3.2006 made by the Motor Accident Claims Tribunal, Amravati (Tribunal) in M.A.C.P. No.137/2001 to the extent the same denies the petitioner compensation of Rs.1,31,220/- and instead awards the appellant compensation of only Rs.32,400/-.

3. Mr. Dahat, the learned counsel for the appellant submits that the Tribunal was not justified in excluding the medical certificate at Exh.41 which had certified that the appellant sustained permanent disability to the extent of 25% on account of the injuries suffered by him in the motor vehicle accident. He submits that even otherwise no proper compensation has been awarded for factors like pain and suffering, medical charges, physiotherapy, nutrition diet.

4. I have considered the aforesaid submissions of Mr. Dahat and perused both the record as well as the impugned judgment and award. The medical certificate at Exh.41 has been discarded primarily because the appellant failed to examine Doctor Baitule, who had issued the said certificate. Though the approach of the Tribunal cannot be faulted with, according to me, there was other evidence on record that has been considered by the Tribunal, but the proper effect has not been given to such evidence. For example, the Tribunal has taken into account the injury certificate at Exh.33, discharge card at Exh.34 and the other documentary evidence at Exh.35 and 36 all concerning the injuries sustained by the appellant, his hospitalization, his discharge card, and the nature of grievous injuries sustained by him. Now based on all these materials coupled with the deposition of the appellant, it cannot be said that the appellant had failed to establish some permanent disability suffered by him on account of the accident. Therefore, even if the certificate at Exh.41 is excluded from consideration, based on the other material on record, the case was made out by the appellant about the permanent disability suffered by him maybe not to the extent of 25% but lesser. Therefore, the Tribunal was not justified in discarding the petitioner's claim based on permanent disability in its entirety.

5. Besides, in this case, the Tribunal has been too conservative in awarding compensation, particularly on the aspect of pain and injuries, towards the nutrition diet, physiotherapy, and other medical expenses. The Tribunal has also ignored the aspect of the impact on the future prospects of the appellant, who was only 32 years at the time of his accident. The evidence on record establishes that the appellant's right leg was operated and a plate was inserted in the right leg. There is evidence that the offending vehicle was driven rashly and negligently and that it violently dashed against the appellant. There is a record about the multiple injuries including head injury, fracture on the right knee, etc.

6. Having regard to the aforesaid evidence on record, according to him, the compensation amount is required to be enhanced from Rs.32,400/- to Rs.60,000/-. This is because the Tribunal, as noted earlier, has failed to take into account several relevant aspects, which it ought to have considered in determining just compensation.

7. For all the aforesaid reasons, this appeal is partly allowed and the compensation amount is enhanced from Rs.32,400/- to Rs.60,000/-. The other directions in the

impugned award, including the direction for payment of interest, are maintained.

8. respondent no.2 will now have to pay/deposit the amount as now determined, within three months from today. The deposit should be made in this Court and thereupon the appellant will be entitled to withdraw the same. The compensation amount already paid will have to be adjusted while making the payment so deposited.

9. The appeal is partly allowed without any order for costs.

[M.S. Sonak, J.]

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