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

FIRST APPEAL NO.1334 OF 2008

Rajesh Vishnu Gade,
Aged about 28 years,
Occupation-Service,
R/o. Chhoti Umri, Akola,
Tq. and Dist. Akola.

Through Lrs.

1] Smt. Sushama wd/o Rajesh Gade,
a/a 34 years, Occ. Household work,

2] Ku. Sakshi Rajesh Gade,
a/a 8 years., Student,

3] Gaurav s/o Rajesh Gade,
a/a 5 years., Student.

Nos.2 and 3 are minors by next friend,
natural mother,

Smt. Sushma wd/o Rajesh Gade,
a/a/ 34 years, occ. Household work,

All r/o near Datta Mandir, datta wadi,
Lahan Umri, Akola, Tq. & Distt. Akola.

.. Appellants

.. Versus ..

1] The New India Insurance Company Ltd.,
Old Cotton Market, Akola, Tq and Distt.
Akola, through its Manager.

2] Pramila wd/o Kailashrao Wakode,
Adult, Occ. Agriculturist,
R/o. dixit vasti, Chhoti Umari, Akola,
Tq. and Distt. Akola.

3] Subhash s/o Sukhdeo Ingle,
Adult, Occ. Driver,
R/o. Chhoti umri, Akola,
Tq and Akola, at present residing
at warwat (Bakal),
Distt. Bhandara. .. Respondents

……….
Mr. R.M. Tiwari, Advocate for the appellants,
Mr. M.B. Joshi, Advocate for respondent no.1.
……….

CORAM: M.S. SONAK, J.
DATED: DECEMBER 09, 2021.

JUDGMENT

Heard the learned counsel for the parties.

2. This appeal is directed against the judgment and award dated 8.4.2002 made by the Motor Accident Claims Tribunal, Akola (Tribunal) in M.A.C.P. No.147/1999.

3. The appellant is aggrieved because he had claimed compensation of Rs.3,00,000/- but the Tribunal has awarded compensation of only Rs.73,000/-.

4. Mr. Tiwari, learned counsel for the appellant has very ably put forth the case of the appellant. He pointed out that in this case there is clear evidence about the offending

vehicle (truck) being driven in a rash and negligent manner and dashing the appellant. As a result of his accident, the appellant suffered very serious injuries and had to be operated not less than four occasions. He submits that there was shortening of the appellant's left leg by 2 inches and the medical evidence certifies that the appellant suffered permanent disability to the extent of 32%. Mr. Tiwari submits that the original appellant died during the pendency of this appeal at 31 years of age. He submits that the compensation amount awarded is quite paltry and the learned Tribunal has failed to take into account the law laid down by the Hon'ble Supreme Court in the case of **Laxman alias Laxman Mourya .vs. Divisional Manager, Oriental Insurance Company Limited and another, (2011) 10 SCC 756 and Sandeep Khanuja .vs. Atul Dande and another, 2017 (4) Mh.L.J. 1.** He submits that no proper compensation has been paid towards various pecuniary and non-pecuniary damages suffered by the appellant. Based on the aforesaid, Mr. Tiwari submitted that this is a fit case where compensation should be enhanced to Rs.3,00,000/- in terms of the claim of the appellant.

5. Mr. M.B. Joshi, learned counsel for respondent no.1-Insurance Company, submitted that the compensation

awarded by the Tribunal is adequate. He submitted that there is no evidence on record to grant any enhancement. He submits that, in this case, earning capacity of the claimant was not at all affected. He relied on **Raj Kumar .vs. Ajay Kumar, 2011 (2) Mh.L.J. 569**, to submit that where earning capacity is not affected, then enhanced compensation need not be awarded in disability cases. He, therefore, submits that this appeal may be dismissed.

6. There is no dispute about the accident and the injuries suffered by the appellant due to his accident. The appellant deposed before the court and pointed out that initially he was admitted to the Government Hospital, but for receiving better treatment, he was shifted to the private hospital, where he was operated on his left leg. He has deposed that he was in a private hospital for about eight days. He has deposed that due to the injuries and operations, his left leg had to be shortened by 2 inches. He has deposed that up to the date of filing of the petition, at least four operations have to be performed on the left leg and he was required to spend Rs.90,000/- on the treatment, etc.

7. Dr. Patil, in whose hospital the appellant was admitted and treated, has also deposed in this matter. This

doctor has issued the disability certificate, certified the disability to the extent of 32%.

8. The claimant has also deposed that he was bedridden for about eight months and could not attend his duties in the Municipal Council, where he was a Class-IV employee. The appellant has also produced several medicines bills. The Tribunal has accepted that in terms of these bills, the last operation on the appellant was performed on 23.3.1999 when the accident took place on 26.10.1998. Based on this, the Tribunal accepted that the appellant was bedridden for at least six months due to the injuries. The Tribunal should have accepted the appellant’s deposition that he was bedridden for eight months because it is reasonable to proceed based on that even after the last operation the appellant may not have been in a position to immediately resume the duties.

9. In terms of the decision of the Hon’ble Supreme Court in the case of *Laxman Mourya (supra)*, the Tribunal had to determine compensation for pecuniary and non-pecuniary damages. In this regard, reference can be made to what is set out in paragraph 14 of the said decision, which reads as follows :

"14. In Raj Kumar v. Ajay Kumar, the Court considered some of the precedents and held :

"5. 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 it 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.....

6. The heads under which compensation is awarded in personal injury cases are as follows :

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 earnings 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) (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".

(emphasis supplied)

10. In this case, the Tribunal has held that the appellant has produced so many bills of medicines, and therefore, it must be held

that he must have spent at Rs.30,000/- on his treatment. Based on this reasoning, the Tribunal has awarded compensation of only Rs.30,000/-, towards expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure, this is not at all proper. The appellant had clearly deposed to the expenditure incurred by him for the operation, hospitalization, transportation, medicines, nourishing food, and miscellaneous expenditure. All this could not have been ignored, particularly since several bills were produced on record. In my judgment, compensation of Rs.60,000/- was due and payable to the appellant under the head of expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

11. On the aspect of loss of earning, the Tribunal has reasoned that the appellant was a municipal employee and therefore, there was no loss of earning as such. However, the Tribunal has awarded Rs.13,000/- towards the loss of earnings during the period of treatment. This is quite proper because it is reasonable to presume that some portion of the leave was without pay. There is no evidence about loss of future earning on account of this permanent disability, or about the diminution of the appellant's promotional prospects.

12. No award has been made towards future medical expenses. Having regard to the injuries and disablement suffered by the appellant at least Rs.25,000/- should have been awarded towards the future medical expenses. Towards the non-pecuniary damages like damages for pain, suffering, and trauma as a consequence of the injuries, the Tribunal has made a paltry award in the amount of Rs.5,000/-. This is totally inadequate. *In Laxman Mourya (supra)*, the Hon'ble Supreme Court awarded compensation of Rs.1,50,000/- towards pain, suffering, and trauma. There the accident had taken place on 22.9.2003. In this case, the accident has taken place in the year 1998. Although indeed, the pain, suffering, and trauma would not be lesser, some allowance will have to be made to the aspects like inflation, etc. and it would be appropriate to award Rs.75,000/- towards the damages for pain, suffering, and trauma as a consequence of the injuries.

13. The Tribunal, in this case, has granted compensation of Rs.25,000/- on account of loss and amenities of life. According to me, this is required to be enhanced to Rs.50,000/-. The appellant was 22 years of age at the time of the accident. As a result of permanent disability to the extent of 32% suffered by him, there must have been some amount prospects of marriage, as pointed by Mr. Tiwari. Even otherwise, Rs.50,000/- represents just compensation under this head.

14. The record bears that the claimant was 22 years at the time of the accident. The record also bears that the claimant died at the age of 31 years and this appeal is now pursued by his widow and two minor children. Thus, it is clear that the disability suffered by the claimant affected his normal longevity and on this ground itself an additional compensation of Rs.75,000/- was certainly due. Thus, the total compensation to be determined in this case comes to Rs.2,98,000/-, which is required to be rounded to Rs.3,00,000/-. The compensation of Rs.3,00,000/- will represent just compensation in the facts of the present case.

15. The decisions in *Raj Kumar (supra) and Sandeep Khanuja (supra)* provide that a crucial factor in the determination of compensation in cases of permanent disablement is the adverse effect on earning capacity of the injured. In this case, for loss of future income, no compensation has been awarded, having regard to the fact that the claimant was a municipal employee and there was no evidence that his salary or emolument were reduced. Therefore, based on these two decisions, there is no case made out to reduce the compensation of Rs.3,00,000/- as now determined.

16. This appeal is therefore **allowed.** The compensation amount is enhanced to Rs.3,00,000/-. The directions about the

payment of interest are not disturbed. Respondent nos.1, 2, and 3, including in particular respondent no.1-Insurance Company, is directed to deposit the enhanced compensation in this court, within two months from today, no doubt, after adjusting the amounts that have already been paid. Once the amounts are deposited, the appellants will be at liberty to withdraw the same. The registry to ensure that the same are transferred into the bank accounts of the appellants, as expeditiously as possible. There shall be no order for costs.

[M.S. Sonak, J.]

Gulande