

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

FIRST APPEAL NO. 1216 OF 2019

Shri Dhanram Gopichand Sanodiya,
aged about 48 years, Occ. - Service,
R/o Quarter no. WP-28, Indormaa
Quarter No.2, Butobori, Nagpur.

.... APPELLANT

// VERSUS //

1. Shri Vijay Agrawal,
Aged Major, Occ. - Business,
R/o Pappu Roadways, New
Khursipar, Bhilai, Distt. Durg
(Chattisgarh).
2. The Divisional Manager,
National Insurance Company Ltd.,
D.O. No.1, Firdos Chamber,
Wardha Road, Nagpur.

.... RESPONDENTS

Shri S.A. Kalbande, Advocate for Appellant.
Respondent no.1 is served.
Shri V.P. Maldhure, Avocate for Respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 09/02/2021.

JUDGMENT :

With consent, heard finally at the stage of admission.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and Award passed by M.A.C.T. Nagpur in Claim Petition No. 178 of 2011. The Claims Tribunal has partly allowed the claim petition filed by the Appellant under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') and awarded compensation of Rs.4,01,778/- inclusive of compensation paid under no fault liability with interest at the rate of 7.5% per annum from the date of filing of petition till final realization.

3. The Appellant who shall be hereinafter refereed to as 'Claimant', had met with an accident on 10/01/2018 involving Trailer bearing No.CJ-07-C-1897 which was owned by Respondent No.1 and insured by Respondent No.2 – Insurance company. The Claimant was 38 years of the age and was working as a Tenter with Indorama Spentex Industries Ltd. and earning salary of Rs. 7200/- per month. He had sustained several fractures with loss of right eye resulting in 50% permanent disablement. The Claimant stated that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. He therefore, filed an application under Section 166 of the M.V. Act claiming compensation of Rs.9,25,000/-, which was subsequently restricted to Rs.6,00,000/-.

4. The Respondent No.1 did not contest the proceedings. The Respondent No.2 denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondent also took a defence that it was not liable to indemnify the insured in view of breach of terms and conditions of the policy.

5. The Tribunal after considering the evidence on record, held that the accident was caused due to rash and negligent driving by driver of the offending vehicle. Though the Claimant had claimed the actual loss of income for a period of 21 months, the Tribunal awarded compensation of Rs.43,200/- towards actual loss of income for six months. The Tribunal further held that the Claimant was still in service and there was no loss of future income. The Tribunal awarded compensation of Rs.2,03,578/- towards medical expenses, Rs.25,000/- each towards special diet and attendant charges, Rs.5000/- towards conveyance charges, Rs.50,000/- towards damages in respect of permanent privation of eyesight and permanent dis-figuration of face and Rs.50,000/- towards pain and suffering. The Tribunal thus awarded total compensation of Rs.4,01,778/- with interest at the rate of 7.5% per annum. Being dissatisfied with the quantum of compensation, the Claimant has challenged this judgment and Award

in this Appeal.

6. Learned Counsel for the Claimant states that the Tribunal has erred in not awarding compensation for actual loss of earning for 15 months. He further submits that the Claimant is no longer in service, he is unable to perform his duties as a Tenter and hence, the Claimant is entitled for compensation towards loss of future earning. He further submits that considering the nature of injuries sustained by the Claimant, the compensation awarded towards pain and suffering and permanent disability, needs to be enhanced.

7. Shri V.P. Maladhure, learned Counsel for Respondent No.2 submits that the Claimant has not adduced any evidence to prove that he was unable to resume duties for a period of 21 months. He submits that the Tribunal has considered the evidence on record and has rightly awarded compensation towards actual loss of income for a period of six months. He further submits that the compensation awarded towards pain and suffering and permanent disability is adequate, just and reasonable and does not warrant any interference.

8. I have perused the record and considered the submissions

advanced by learned counsel for respective parties.

9. In the instant case, the factum of accident is not in dispute. The fact that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and that the Claimant has sustained grievous injuries resulting in permanent disability of 50% is also not in dispute. The only question is about the quantum of compensation awarded by the Claims Tribunal for actual loss of income, pain and suffering and permanent disablement and failure to award compensation under the head of future loss of earning.

10. In the said accident, the Claimant had suffered from following injuries :

- 1) Head injury with extra neuro haematoma with subdural haematoma with temporal contusion.
- 2) Fracture mandible,
- 3) fracture maxila
- 4) fracture zygoma and Orbit.

11. The evidence of Dr. Dipak Deshmukh (CW-2) reveals that the Claimant was operated by Neuro Surgeon and Plastic Surgeon. He was discharged from the hospital against medical advise on 29/01/2011. The evidence of Dr. Raju alias Rajendra Deshmukh (CW-

4) also reveals that the Claimant was admitted at Suretech Hospital on 10/01/2011 with hemorrhagic contusion of right side temporal region with fracture of Mandible, Maxilla and Zygomatic and Orbit. Dr. Deshmukh had examined the patient again on 08/08/2012 for assessment of permanent disability. He has deposed that the Claimant had lost his eyesight of right eye because of the fracture in Orbit. He has assessed permanent disability at 50% in view of permanent privation of the sight of the right eye.

12. The evidence of the Claimant reveals that at the time of accident he was working as a Tenter with Spentex Industries Ltd. and that his monthly salary of Rs.7200/- per month. He has deposed that he was under treatment for a period of 3 years, during which period he was on leave without pay. The statement of this witness that he was under the treatment of the doctors and that he was on leave without pay, has not been denied in his cross-examination. The evidence of CW-4 Rajkumar Mukundwar, Deputy General Manager (HR) of Spentex Industries Ltd. also reveals that the Claimant was working as a tenter since 04/01/1994 and that he was absent from duty from 10/01/2011 to 27/10/2012 in view of injuries sustained in the accident. He has deposed that his absence from duty during this period, was treated as

leave without pay. In his cross-examination, he has stated that the Claimant had filed a leave application after his discharge from the hospital. He has denied the suggestion that his absence from 10/01/2011 to 27/10/2012 had no nexus with the accident.

13. Thus the evidence of the Claimant as well as the evidence of CW-2 clearly indicates that the Claimant was on leave from 10/01/2011 and 27/10/2012 in view of the injuries sustained in an accident and his absence during this period was treated as leave without pay. Considering this aspect, in my considered view the Tribunal was not justified in considering six months period as absence without leave and declining to grant any compensation for actual loss of income for the balance period of 15 months. The Claimant was drawing salary of Rs.7200/- per month. Hence, loss of actual income for 15 months is assessed at Rs.1,08,000/-.

14. Though the Claimant has claimed compensation towards future loss of income his evidence undertakes that prior to the accident he was working as a machine operator and that he continues to work on the same post even after the accident. He has stated that there is no change in his salary on the contrary his salary has increased after the

accident. The evidence of CW-4 also indicates that the Claimant continues to work in the same company and that presently he is drawing gross salary of Rs.12,806/-. The testimony of the Claimant as well as the evidence of CW-4, reveals that there is no loss of earning capacity and as rightly held by the Tribunal the Claimant is not entitled for loss of earning capacity and loss of future income.

15. The Tribunal has awarded compensation of Rs.50,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities. As noted earlier, there is permanent privation of the sight of the right eye. Considering the nature of the injuries and its impact on day to day activities of the Claimant, who was a young man of 38 years, in my considered view the amount of compensation awarded towards loss of amenities of life and pain and suffering needs to be enhanced. Hence, the Claimant is entitled to additional compensation of Rs.50,000/- towards loss of amenities of life and Rs.40,000/- towards pain and suffering. Therefore, the Claimant is entitled for compensation of Rs.5,99,778/-, which is rounded up to Rs.6,00,000/-. Under these circumstances and in view of the reasons, the following order is passed:

(a) The Appeal is allowed.

- (b) The Claimant is entitled for compensation of Rs.6,00,000/- with interest which is inclusive of compensation paid under Section 140 of M.V. Act. The said amount shall carry interest at the rate of 7.5% per annum from the date of the petition till final realization.
- (c) The Respondent No. 2 to deposit the balance amount of compensation of Rs.1,98,222/- with proportionate interest, within a period of six months.
- (d) The Claimant is permitted to withdraw the said amount.

16. Appeal stands disposed of accordingly.

JUDGE

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