

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.575 OF 2019

Shrikant s/o Rangnath Surse,
Age 45 years, Occu. Service,
R/o Shivaji Maharaj Gruhanirman
Society, Dasrenagar,
Behind Hotel Garva, Ahmednagar

... APPELLANT

VERSUS

1. Walmik Baburao Ingwale,
Age 50 years, Occu. Agril.,
R/o Jagegaon Bk. House No.685,
Mulshi Road, Tal. Shirur,
District Pune

2. The Branch Manager,
Shriram General Insurance
Company Ltd., Divisional Office –
313, Third Floor, East Wing,
Arora Towers, Premises Society,
9, Dr. Ambedkar Road,
Pune, District Pune.

... RESPONDENTS

.....
Mr. R.S. Kasar, Advocate for appellant
Shri V.N. Upadhye, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 1st December, 2021

Date of pronouncing judgment : 22nd February, 2022

J U D G M E N T :

The challenge in this appeal is to the judgment
and award dated 30/10/2018, passed by Member, Motor

Accident Claims Tribunal (Tribunal), Ahmednagar, granting compensation of Rs.30,06,000/- with interest @ 8% p.a. on account of permanent disability suffered in an accident involving motor vehicles. The appellant herein is the original claimant. Finding the amount of compensation awarded under the impugned award to be grossly inadequate, he has filed the present appeal for enhancement therein.

FACTS

2. The appellant (claimant) was proceeding on his Hero Honda Splender motorbike, Registration No.MH-16-V-6497, along Nagar-Pune Highway. While he was passing by Hotel Prathmesh, Shikrapur, a Hero Honda Deluxe motorbike, Registration No.MH-12-MC-3766, dashed the claimant from behind. As a result thereof, he fell off the motorbike and suffered multiple injuries. He was immediately rushed to Ruby Hall Clinic, Pune. He was indoor patient there. He has suffered brain injury. He underwent operation. The doctor certified him to have suffered 55% of disability. On due investigation, the rider of the motorbike, (No.MH-12-MC-3766) was proceeded against by filing the charge sheet for being responsible for the accident. The claimant, on the other hand, filed a petition, (No.290/2016) against the owner of the

offending motorbike and its insurer for compensation. It is his case that, he was serving as a Senior Engineer with Western India Forging Pvt. Ltd. at a monthly pay of Rs.22,433/-. He was 45 years of age when met with the accident.

On appreciation of the evidence in the case, the Tribunal granted compensation as stated above.

3. Heard. Learned counsel for the appellant would submit that, the monthly salary of the appellant was Rs.22,433/-. The Tribunal ought not to have scaled it down to Rs.21,650/- after making deductions towards Income Tax and professional tax. The claimant had agricultural income as well. Although he suffered 55% of disability, his loss of earning capacity was 100%. The evidence of Dr. Sachin Gandhi has not been properly appreciated. The appellant incurred medical expenditure over Rs.13,00,000/- (Rupees thirteen lakhs). The Tribunal granted only a sum of Rs.10,00,000/- (Rupees ten lakhs) on that count. The learned counsel has relied on judgment of the Apex Court in case of **Raj Kumar Vs. Ajay Kumar & anr. [(2011) 1 SCC 343]** to ultimately urge for substantial enhancement in the

amount of compensation.

4. The learned counsel for the respondent No.2 Insurance Company would, on the other hand, submit that, the Tribunal has rightly appreciated the evidence in the case and granted just and adequate compensation. The Tribunal had an advantage to observe physical appearance of the appellant. It has, therefore, rightly observed that the appellant can do table work to earn his living. According to learned counsel, no interference is warranted with the impugned award.

5. Considered the submissions advanced. Perused the evidence relied on. The question involved in this appeal is as to whether the Tribunal has granted just and reasonable compensation in the facts and circumstances of the case. The Apex Court, in paragraph No.19 of its judgment in Raj Kumar's case (supra), has observed thus :

“19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

6. The appellant was admitted to Ruby Hall Clinic, Pune. He was indoor patient there. Dr. Sachin Gandhi, who had attended the appellant, was examined in proof of the injuries and disability suffered by the appellant. The disability certificate (Exh.31) reads thus :

(a) Permanent private of the sight of either eye or the hearing of the either ear or privation of any member or joint : Permanent left sided weakness.

(b) Destruction or permant impairing of the power of any member or joint, or : Left sided upper and lower limb power weak.

(c) Permanent disfiguration of the head of face :

(i) Left sided facial palsy (paralysis)

(ii) Left sided heuniparentis (paralysis)

(iii) Severe traumatic brain injury; can't concentrate, can't walk.

Permanent disability worth > 55%.”

7. The Tribunal, while appreciating the medical evidence, observed :

“22. Dr. Sachin Gandhi (P.W.2) has given details of the injuries caused to the head of the petitioner. It is stated that there was haemorrhage under the scalp and on the surface of the brain. Therefore, he performed surgery when the petitioner admitted immediately after the accident. Thereafter on 13/10/2015 he performed surgery of plantation of scalp implant and since then the petitioner is taking follow up treatment continuously. The witness has further stated that the petitioner has suffered from paralysis of left side and disfiguration of his face, particularly of the left side. The left hand and leg of the petitioner did not work when he walks and thereby the confidence of the petitioner has been shaken. When the petitioner talks, disfiguration of his face can be noticed. The doctor has therefore assessed disability of the petitioner to 55% as permanent disability.

According to doctor, there are no chances of reduction of disability in future. Dr. Gandhi (P.W.2) has also stated that in future the petitioner will be depending upon someone else for his activities.”

8. Dr. Gandhi had attended the appellant in the hospital. Nothing has been brought to the notice of this Court to disbelieve the evidence of Dr. Gandhi. As such, it was proved that the disability suffered by the appellant was 55%. The nature of disability suggests percentage of loss of earning capacity. Shri Agatrao Pawar (P.W.3) was examined in proof of income of the appellant. It is in his evidence that the appellant tendered resignation of his post on 7/5/2018. The resignation was accepted the next day i.e. on 8/5/2018. There is nothing to suggest the appellant to have been in any other employment or doing something to earn his living. True, the Tribunal had an advantage to observe the physical condition on his appearance before it to lead evidence. The Tribunal observed :

“The petitioner has been paralysed and he cannot do field work. However, he is an Engineer. He has been recovered from the injuries to certain extent. Therefore he can certainly do some sitting job. Although it is stated that the petitioner is suffering from loss of memory, evidence of Dr. Gandhi (P.W.2) does not fortify this fact. Therefore even if the petitioner is not able to do

manual work, he can certainly do table work being a skilled person, it cannot be said that he has become totally disabled.”

With these observations, the Tribunal considered it to be a case of 50% loss of earning capacity and granted the compensation. The details of the compensation granted by the Tribunal are as under : (Raj Kumar’s case – supra).

Sr.No.	Particulars	Amount (in Rs.)
1	Permanent disability vis-a-vis loss of future income	18,20,000
2	Loss of income during treatment	86,600
3	Medical expenses	10,00,000
4	Pains and sufferings	40,000
5	Special diet and attendant	40,000
6	Transportation	20,000
	Total :	30,06,600

9. The heads under which the 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).

10. When there is evidence to suggest the left side of the appellant's person has been paralysed and he would be dependent on one person for all his further activities, lead this Court to observe to assess the loss of earning capacity to 75%. True, the appellant being an Engineer, may do something to earn. His physical condition is, however, such that he may not be able to earn as he was earning before the accident. His left hand and left leg did not work when he

walks and thereby his confidence has been shaken. Disfiguration of his face is evident. He would also be required to spend on his health. In the peculiar facts and circumstances of the case, the percentage of loss of earning capacity is, therefore, assessed at 75% as against 50% assessed by the Tribunal. As such, there would be addition of compensation of Rs.6,10,000/- on this count.

11. A very meagre amount of Rs.40,000/- has been awarded towards pain and sufferings. Considering the nature of disability and injury suffered by the appellant, the same is enhanced to Rs.1,40,000/-. On account of future medical treatment, he is awarded a sum of Rs.1,00,000/-. There would, however, be no interference with the quantum of compensation awarded under other heads as the same has been granted on due appreciation of the evidence in the case. Some of the medical bills have rightly been discarded. Some were found to be inflated. As such, there would be enhancement in the amount of compensation by Rs.8,10,000/-.

12. In the result, the appeal succeeds in terms of the following order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.30,06,600/- to Rs.38,16,600/-.
- (iii) Clause (4) of the impugned award, which reads: "The respondent insurance company to follow the provisions under section 194-A (3)(ix) of Income Tax Act while deducting TDS from the payable amount of compensation", stands withdrawn.
- (iv) Rest of the terms of the impugned award to stand unaltered.

**(R. G. AVACHAT)
JUDGE**

fmp/-