

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

FIRST APPEAL NO. 2342 OF 2018

Akshay @ Vikas Ramesh Chavan,
Age 25 years, Occu. Nil,
R/o Girnar Tanda, Post Gevrai,
Taluka and District Aurangabad

.. Appellant

Versus

1. Kailas Vitthalrao Shinde,
Age 44 years, Occu. Business,
R/o Atharva Pimpri,
Taluka & District Beed

2. The Manager ICICI Lombard,
General Insurance Company Limited,
Adalat Road, Aurangabad
Taluka & District Aurangabad

. Respondents

Mr Sanket S. Kulkarni and Mr Mukeshkumar R. Singh, Advocates for appellant
Mr V.P. Savant, Advocate for respondents no.1
Mr Abhijit G. Choudhari, Advocate for respondent no.2

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 1.2.2022

PRONOUNCED ON : 18.4.2022

ORDER :

1. Heard finally at admission stage with the consent of both the sides.
2. The dispute in this appeal is restricted to percentage of permanent disability and determination of compensation.
3. The appellant/claimant was serving as a Cleaner on Tata Tempo vehicle bearing registration No.MH-20-CT-6516 owned by one Dilip Suryabhan Vyawahare.
4. On 29.4.2014 at about 1.30 a.m. at midnight, the abovesaid vehicle of the appellant was punctured on Aurangabad-Beed highway near Pandhari

Shivar in front of land of Shaikh Rasul. The vehicle was parked by the side of the road and the work of replacing the tyre was in progress. The appellant was replacing the tyre when truck bearing registration No.MH-23-4797 driven in a rash and negligent manner gave dash to the Tata Tempo vehicle which was in stationary condition and caused the accident. The appellant was taken to the hospital for treatment. He was treated at Multispecialilty Hospital Pvt. Ltd. at Aurangabad where he was admitted as indoor patient from 29.4.2014 to 10.5.2014. In the said accident, right leg of the appellant got crushed and it came to be amputated. Left leg was also badly damaged. Dilip Suryabhan Vyawahare (owner of Tata Tempo) lodged F.I.R. about the accident with Police Station, Karmad. On that basis, F.I.R. came to be registered against the truck driver.

5. The appellant had filed injury claim under Section 166 of the Motor Vehicles Act, 1988 and sought compensation assessed at Rs.60 lakhs.

6. The learned Member, M.A.C.T. Aurangabad was pleased to allow the claim partly to the extent of Rs.14,22,457/- (including N.F.L. amount) with interest @ 9% per annum from the date of claim petition till its realisation.

7. Feeling aggrieved and dissatisfied by the impugned judgment and award passed by the Member, M.A.C.T., Aurangabad, the original claimant has preferred this appeal for enhancement of compensation.

8. Heard Mr Sanket S. Kulkarni, learned Advocate for appellant/claimant, Mr V.P. Savant, learned Advocate for respondent No.1/owner of the vehicle and Mr Abhijit Choudhari, learned Advocate for respondent No.2/Insurance Company.

9. Mr Sanket S. Kulkarni, learned Advocate for appellant vehemently submitted that the tribunal has committed mistake in accepting income of the appellant at Rs.6,000/- per month when there was enough evidence to show that his income was Rs.10,000/- per month at the relevant point of time. He submitted that the appellant has produced permanent disability certificate vide Exh.59. The permanent disability of the appellant is determined at 85%. The tribunal has committed an error in determining the permanent disability at 45% by interpreting the evidence of expert Doctor in an improper way. The tribunal has also not considered future medical expenses for replacement of artificial leg. He submitted that the compensation awarded by the tribunal is inadequate having regard to the facts of the case and evidence on record. He, therefore, urged to allow the appeal by enhancing the amount of compensation.

10. Mr Sanket S. Kulkarni, learned Advocate for the appellant/claimant has placed his reliance on following stock of citations in support of his argument on the point of permanent disability and compensation thereof.

(i) **Civil Appeal No.8420 of 2018 (arising out of SLP (Civil No.1159 of 2018) dated 21.8.2018.**

(ii) **National Insurance Company Ltd., Vs. Pranay Sethi and ors., reported in 2017 (16) SCC 680.**

(iii) **V. Mekala Vs. M. Malahi and anr., reported in (2014) 11 SCC**

(iv) **Syed Sadiq and ors., Vs. Divisional Manager, United India Insurance Company Ltd, reported in (2014) 2 SCC 735**

(v) **Dinesh Singh Vs.Bajaj Allianz General Insurance Company Ltd. and anr. reported in (2014) 9 SCC 241**

11. Mr Abhijit Choudhari, learned Advocate for respondent no.2/Insurance Company supported to the findings recorded by the tribunal. He submitted that there was variance in between the pleadings and evidence in respect of claimant's income. The tribunal has rightly determined monthly income of the appellant at Rs.6,000/- on the basis of evidence. There is no error on the part of the tribunal while accepting the monthly income of the appellant as Rs.6,000/-. He pointed out the evidence of Dr. Bedmutha, Orthopedic Surgeon. He invited my attention that Dr. Bedmutha has admitted unambiguously while facing the cross-examination that the claimant has suffered 45% permanent disability of his entire body. He submitted that the tribunal has correctly assessed the compensation. The tribunal has also considered the future medical expenses, so also expenses for artificial leg. He submitted that the compensation awarded by the tribunal is adequate. There is no merit in the appeal.

12. Mr V.P. Savant, learned Advocate for respondent no.1 argued on similar lines.

13. I have considered the submissions of learned Advocates for both the sides. Perused the impugned judgment and award passed by the tribunal, relevant evidence and the citations relied upon by Mr Sanket S. Kulkarni, learned Advocate for the appellant/claimant.

14. It is statutory duty of the tribunal and the Court as well to award "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and courts. This

reasonableness on the part of the tribunal and the court must be on a large peripheral field.

15. On going through the evidence of appellant/claimant and the expert doctor, Dr. Bedmutha, it is very clear that right leg of the appellant below thigh came to be amputated due to crush injuries. The left leg of the appellant is also found badly damaged due to injuries caused in the motor vehicular accident. The impact of amputation of leg on the earning capacity of the appellant/claimant needs deep consideration. The appellant/claimant was working as a Cleaner on one vehicle Tata tempo. Due to amputation of right leg of the appellant, certainly he is unable to discharge his work and job as a Cleaner on the vehicle. It has severe impact on the earning capacity of the appellant/claimant.

16. In case of **Anant Son of Sidheshwa Dukre Versus Pratap Son of Zhamnnappa Lamzane & Anr.** reported in **(2018) ALL SCR (1814)**, it is held by the Honourable Supreme Court that in cases of permanent disability, loss of earning capacity compensation needs to be assessed by applying multiplier method. It is incorrect to award compensation in such injury claims by awarding compensation in lump sum.

17. In case of **Jakir Hussein Vs. Sabir and ors.**, reported in (2015), 7 SCC 752, it is held by the Honourable Supreme Court that though the claimant is suffering from permanent disability 30% and 50%, the tribunal cannot overlook that it is a case of 100% functional disability. It is a case of amputation of one leg.

18. In case of **Raj Kumar Vs. Ajay Kumar and anr.** reported in **AIROnline 2010 SC 125**, the Honourable Supreme Court has laid down the

parameters for awarding compensation in personal injury cases as under :

5. The heads under which 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)

19. 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. Assessment of pecuniary damages under item (i) and

under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

20. The case in hand is not a routine personal injury case. It is a case of amputation of one leg below thigh and another leg which is badly damaged due to injuries caused in the motor vehicular accident.

21. The tribunal has given much emphasis on the percentage of disability stated by Dr. Sachin Bedmutha. According to Dr. Bedmutha, he has issued permanent disability certificate to the appellant/claimant. He has assessed permanent disability of the appellant to the extent of 85% and accordingly, issued permanent disability certificate vide Exh.59. Dr.Bedmutha has further stated in his evidence that there is amputation of right leg knee in upper 1/3rd. While facing the cross-examination, Dr. Bedmutha admitted that disability certificate issued by him is in respect of limb and not in respect of entire body. According to Dr. Bedmutha, the claimant is suffering from 45% permanent disability of his entire body. The percentage of permanent disability may differ on the basis of guidelines issued by the medical journals and according to standard parameters. It is proved by the claimant on the basis of his evidence as well as by taking help of evidence of Dr. Bedmutha that his right leg below thigh has been amputated. His another leg is badly damaged due to accidental injuries caused in the motor vehicular accident. The appellant was working as a

Cleaner at the relevant point of time. If his nature of job as a Cleaner is taken into consideration, he needs two legs to discharge his job as a Cleaner of the vehicle. His another leg is also badly damaged. It has caused severe impact on the earning capacity. No owner of the vehicle would engage the appellant on the job of Cleaner because of amputation of one leg of the appellant and another leg is badly damaged.

22. In case of **Sri Chanappa Nagappa Muchalagoda Vs. Divisional Manager, New India Insurance** reported **AIR 2020 SC 166**, it is held by the Honourable Supreme Court about direct impact on the personal functional disability of the original claimant. In the cited case, the appellant/claimant was working as a tanker driver and he could not work as a tanker driver any longer. The Commissioner held that it was a disability of 50%. The High Court increased the same to 60%. The Honourable Supreme Court after appreciating the evidence on record and facts of the case held that it was a case of 100% personal functional disability of the appellant/original claimant and accordingly awarded the compensation. Even though the cited case is under the provisions of Employees Compensation Act, 1923, the ratio laid down thereunder is important and needs to be applied having regard to the identical facts of the case in hand. Here, in this case, the appellant/claimant was working as a Cleaner. He has sustained 85% permanent disability. Because of amputation of left leg below thigh and another leg badly damaged, it has caused severe impact on the job of the appellant/claimant. In this case, it must be held that it is a case of 100% loss of earning capacity by relying upon citation in case of **Sri Chanappa Nagappa Muchalagoda Vs. Divisional Manager, New India Insurance Company Ltd.** (supra). The Tribunal has committed an error in accepting 45% permanent disability of the claimant by relying upon evidence of

Dr. Bedmutha. It seems to be mechanical approach of the Tribunal. The Tribunal has not considered the severe impact on the income of the claimant due to amputation of right leg below thigh and left leg badly damaged. I am not in agreement with finding recorded by the Tribunal. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he could have enjoyed but for the injuries. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

23. The tribunal has considered the income of the claimant at Rs.6,000/- per month in view of variance between the pleadings and evidence of the claimant and looking to the contributory negligence, evidence of the employer of the appellant/claimant. The tribunal has appreciated the evidence of claimant and his employer Dilip Vyavahare in detail and held that claimant was working as a Cleaner by profession and that fact has been duly proved. It is rightly held by the tribunal income of the claimant at Rs.6,000/- per month by considering the evidence produced by the claimant and his witnesses. I do not see any error on the part of the tribunal in this regard. As discussed hereinbefore, the tribunal has committed an error in accepting the permanent disability of the claimant at 45% when it is a case of 100% loss of earning capacity due to amputation of leg. Accordingly, the compensation needs to be re-assessed. Learned Advocate for the appellant/claimant has rightly referred the citation in case of **National Insurance Company Ltd., Vs. Pranay Sethi and ors.** (supra). While calculating loss of income and determining the monthly income of the injured in

injury claim, there is no need to deduct 1/3rd from the monthly income of the claimant under the head of personal expenses in view of decision of the Honourable Supreme Court in case of **Raj Kumar Vs. Ajay Kumar** (supra).

24. Having regard to the above reasons and discussion and in view of legal position made clear by the Honourable Supreme Court in above referred citations, it is a case of 100% loss of earning capacity. Accordingly, compensation is re-assessed as under:

Head	Compensation awarded
i) Income	Rs.6,000/- p.m.
ii) Future prospectus (40% of income) by considering age of claimant	Rs.2,400/-
iii) Net income	Rs.8,400/- per month
iv) Multiplier	18
v) Loss of income Rs.8,400 x 12 = Rs.10,0800 per year Rs.10,0800 x 18 = Rs.1,814,400	Rs.18,14,400
vi) Pain and suffering	Rs.1,00,000
vi) Loss of happiness, amenities and entertainment of life	Rs.1,00,000
vi) Loss of marriage prospectus	Rs.1,00,000
Total compensation comes to =	Rs.21,14,400
(less) Compensation awarded by Tribunal	Rs.14,22,457
Enhanced compensation =	Rs. 6,91,943

25. The tribunal has awarded the compensation of Rs.14,22,457/- which appears to be on lower side having regard to the decision of the Honourable Supreme Court in case of **National Insurance Company Ltd., Vs. Pranay Sethi and ors.** (supra). The appellant/claimant is entitled to get adequate compensation which has been assessed by me in the above chart by taking aid of citation in case of **National Insurance Company Ltd., Vs. Pranay Sethi and ors.** (supra). Both the respondents are liable to pay the enhanced amount of compensation jointly and severally with interest @ 7%. However, to the extent of difference amount. To that extent, the impugned award passed by the tribunal needs to be interfered.

26. For the reasons stated above, the appeal needs to be allowed as under :

ORDER

(i) The appeal stands allowed.

(ii) Respondents No.1 and 2 shall be liable to pay compensation of Rs.21,14,400/- (Twenty-one lakhs fourteen thousand four hundred only) (including N.F.L. amount) to the original claimant.

(iii) The payment made by respondent No.2/Insurance Company to the original claimant, if any with interest shall be deducted. The amount of enhanced compensation of Rs.6,91,943/- (Six lakhs ninety one thousand nine hundred forty three only) shall be paid to the claimant within two months from today. If the respondents failed to pay the amount of compensation within two months from today, the appellant/claimant shall be entitled to get 6% interest thereon till realisation of amount in full.

- (iv) Award be drawn accordingly.
- (v) No order as to costs.
- (vi) R & P be sent back to the concerned Tribunal.

(SHRIKANT D. KULKARNI, J.)

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