

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2144 OF 2011

Hareshwar Harischandra Mistry	...Appellant
Versus	
Pravin B. Nayak & Anr.	...Respondents

Mr. N. V. Gangal a/w Mr. Ashok D. Kadam, for the Appellant.

Ms. Varsha Chavan, for the Respondent No.2

CORAM	:	N. J. JAMADAR, J.
RESERVED ON	:	2 nd DECEMBER, 2021.
PRONOUNCED ON	:	4 th JANUARY, 2022.

JUDGMENT :

1. The appellant-original claimant assails the Judgment and Award in MACP No.972 of 2001, dated 25th October, 2010 passed by learned Member, Motor Accident Claims Tribunal, Palghar (Tribunal), on the ground of inadequacy of the compensation awarded by the Tribunal.

2. The appeal arises in the backdrop of the following facts:

a) In the year - 1996, the applicant claimed that, he was 39 years of age and dealing in the business of fabrication and civil contractor. He used to earn Rs.10,000/- per month. On 17th December, 1996, he was riding a motor cycle bearing No. MH04/ W-2278 in a moderate speed and on the correct side of road, on his way to Mumbai. When he reached near Thermal Power Station,

Dahanu road, opposite new guest house, a Tata Sumo bearing No. MH04 - Q - 5328 owned by the opponent No.1 and insured with opponent No.2 came from the opposite direction in a high speed. The driver of the said jeep drove it in an extremely negligent manner and gave a violent dash to the applicant's motor cycle. Due to the impact, the applicant and Mr. Dilip Amin, the pillion rider, were thrown off the motor cycle. The applicant suffered a compound fracture Tibia (right). It resulted in a permanent partial disability, assessed at 20%. On account of the said disability, the applicant is unable to squat, run, sit cross legged etc. The applicant was made to incur expenses to the tune of Rs. 25,000/- towards medical treatment. Hence, the applicant instituted an application for compensation under Section 166 of the Motor Vehicles Act, 1988 ("MV Act,1988").

- b) The application proceeded ex-parte against opponent No.1-insured.
- c) The opponent No.2 - insurer resisted the claim by filing written statement. All the averments in the application adverse to the interest of the opponent No.2 / insurer were denied. The liability of the insurer to pay the compensation was sought to be contested.
- d) The learned Member of the Tribunal, recorded the evidence

of applicant Hareshwar Mistry, PW-1. The documents tendered by the applicant, namely, copy of FIR (Exh.39), spot of accident Panchanama (Exh.40), insurance cover note (Exh.42), medicine bills (Exh.43), Income Tax return acknowledgment (Exh.45) and the disability certificate (Exh.41) were admitted in evidence on behalf of the insurer.

e) Upon appraisal of the evidence of the applicant and the aforesaid documents, the learned Member was persuaded to record a finding that the accident occurred on account of negligence on the part of the driver of the Tata Sumo vehicle bearing No. MH04/Q-5328 and the applicant had sustained 20% permanent disability therein. The tribunal went on to award the total compensation of Rs.70,000/-, comprising Rs.20,000/- towards medical expenses and Rs.50,000/- towards the disability suffered by the applicant, by the impugned judgment and award dated 25th October, 2010.

f) Being aggrieved by and dissatisfied with the quantum of the compensation, the applicant is in appeal.

3. I have heard Mr. Gangal, the learned counsel for the appellant and Ms. Chavan the learned counsel for the respondent No.2 – insurer. With the assistance of the learned counsels for the parties, I have perused the material on record including the impugned judgment, deposition of the witness and documents.

4. Mr. Gangal, the learned counsel for the appellant strenuously submitted that the determination of compensation by the tribunal, in the case at hand, suffers from the vice ad hocism and arbitrariness. The learned member of the tribunal, according to Mr. Gangal, committed an error in law in not adhering to the well recognized principles of determination of compensation under pecuniary and non-pecuniary heads, in the matter of a personal injury claim. It was further submitted that the award of a sum Rs. 50,000/- towards lump sum compensation, without delving into the exercise of determining the compensation under the well recognized heads caused serious prejudice to the applicant, especially when the fact that the applicant had sustained 20% permanent disability was admitted by the respondent No.2-insurer. In the circumstances, the tribunal ought to have adopted the method of assessing the compensation by arriving at the loss of annual income i.e. multiplicand and multiplying it with appropriate multiplier, having regard to the age of the applicant, urged Mr. Gangal.

5. In contrast to this, Ms. Chavan, the learned counsel for respondent No.2-insurer supported the impugned judgment. It was submitted by Ms. Chavan that in the case at hand, there is positive evidence to indicate that the applicant had not suffered any loss of

income, as is manifested by the Income Tax return acknowledgment (Exh.45), despite the permanent disability. Though there was evidence to show that the applicant had suffered 20% permanent disability, according to Ms. Chavan, there was next to no evidence to further demonstrate that the applicant suffered any functional disability. Loss of income hinges upon the functional disability. In the absence of evidence to establish the fact that the physical disability resulted in functional disability, there was no question of awarding compensation under the head of, "Loss of Future Income," submitted Ms. Chavan. To bolster up this submission, Ms. Chavan placed a strong reliance on the judgment of the Supreme Court in the case of **Rajkumar Vs. Ajay Kumar and another**¹.

6. I have given careful consideration to the aforesaid submissions. To begin with, it would be suffice to note that the finding of the tribunal that the accident occurred on account of negligence on the part of the driver of the offending Tata Sumo bearing No. MH04/Q-5328 has attained finality. The fact that the applicant had suffered permanent disability in the said accident was not controverted on behalf of the respondent No.2 / insurer as the disability certificate (Exh.41) came to be admitted in evidence. The learned member of the tribunal observed that the disability certificate (Exh.41) recorded that there was 6.6% disability at right

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knee, 6.6% at right ankle and 6.6% disability in muscle power aggregating to 20% total disability.

7. In the light of the aforesaid uncontroverted facts, the question that crops up for consideration is, whether the tribunal was justified in awarding lump sum compensation of Rs.50,000/-?

8. For an answer, it is imperative to bear in mind the object of the provisions contained in Section 166 of the MV Act, 1988. The tribunal is statutorily enjoined to award "Just" compensation. A compensation can be said to be "just" if it has the element of restoring the claimant to the position prior to the accident, albeit to the extent possible, in full measure. The tribunals and the Courts are expected to be alive to the fact that a person is not only to be compensated for the physical injury but also for the loss, which such injury entails, namely, inability to earn as much as the injured used to earn or could have earned, inability to lead the life to the fullest and not in the least the inability to enjoy the usual amenities and joys which the life offers.

9. In order to ensure an element of objectivity and minimize the incidence subjectivity and arbitrariness, the compensation in personal injury cases is determined under two broad categories of pecuniary damages and non pecuniary damages. It would be suffice to make a reference to the judgment of

the Supreme Court in the case of **Rajkumar V. Ajay Kumar and Anr.** (supra) wherein the heads of pecuniary and non pecuniary damages were categorized by the Supreme Court 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, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earning (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 earning 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 expectation of life (shortening of normal longevity).”

10. The aforesaid method of determination of compensation under the heads of pecuniary and non-pecuniary damages is well recognized and generally adhered to scrupulously. In the case at hand, evidently, the tribunal went on to award a sum of Rs.70,000/-

without delving into the aspects of the head under which the applicant would be entitled to claim compensation. Mr. Gangal was within his rights in canvassing the submission that the tribunal had fallen into an error in not adhering to aforesaid mandate. By awarding a lump sum compensation, without ascribing justifiable reasons, in my view, the tribunal clearly fell in error. Had the tribunal adhered to the method of determination of compensation, under pecuniary and non-pecuniary heads, it would have arrived at a "just" compensation. I am, therefore, persuaded to determine the compensation under the aforesaid heads.

11. In the facts of the case, under pecuniary damages, the claim of the applicant for award of compensation warrants consideration under two categories.

A] Expenses relating to treatment etc.

B] Loss of future earnings on account of permanent disability.

12. A] Expenses relating to treatment etc. :-

On the first count, taking into account the fact that the applicant could produce bills to evidence the medical expenditure to the tune of Rs.18,657/-, the tribunal awarded Rs.20,000/- towards the medical expenses. No sum was however awarded towards

nourishing food, costs of transportation and miscellaneous expenditure. In the facts of the case, on a conservative estimate, the tribunal ought to have awarded a sum of Rs.10,000/- towards the nourishing food, transportation and miscellaneous expenditure. The compensation under this head, thus, stands enhanced to Rs.30,000/-.

13. B] Loss of future earnings :-

The tribunal was of the view that since the Income Tax return for the period ending 31st March, 1997 (Exh.45) indicated that there was no loss of income reported, despite disability, the applicant did not suffer any loss of income. Opining that mere disability was not sufficient, the tribunal proceeded to award a sum of Rs.50,000/- towards the disability. Whether this approach of the tribunal is justifiable?

14. First and foremost, the tribunal seems to have committed an error in appreciating the facts. The accident had occurred on 27th December, 1996. The income tax return was filed for the period of 1st April 1996 to 31st March, 1997. Almost 9 months income was reported by the applicant. In that view of the matter, the claim of the applicant could not have been discarded on the ground that no loss of income was reported as the applicant could earn for the substantial part of the financial year.

15. Secondly, from the perusal of the deposition of the applicant, it becomes evident that the claim of the applicant that on account of the injuries sustained in the accident he was unable to squat, run, sit cross legged, and the movements of his right leg were restricted, went unchallenged. The applicant further affirmed that he was doing the business of fabrication and civil contractor. Post accident, he could not do the said business and was forced to seek employment at a salary of Rs.6,500/- per month. This claim of the applicant was also not traversed during the course of the cross examination.

16. It is true that the applicant did not claim that he suffered total loss of income. Nor the applicant claimed that he was incapacitated to perform any work. In the face of the material on record to indicate that the applicant had filed income tax return for the financial year 1996-97, it could not have been disputed that the applicant was gainfully self employed. In such circumstances, even assuming the notional income at Rs.5,000/- per month, the 20% permanent disability suffered by the applicant, would have entailed, in the minimum, corresponding 20% loss of income, resulting in the loss of Rs.12,000/- per annum. Once, the annual loss of income is determined, the appropriate method to arrive at just compensation is multiplying the said multiplicand with appropriate multiplier,

depending upon the age of the claimant.

17. A useful reference in this context can be made in the Judgment of the Supreme Court in the case of **Sandeep Khanuja V. Atul Dande and Another**² wherein the Supreme Court, after adverting to the previous pronouncements, observed that it is now well settled principle repeatedly stated and re-stated time and again by the Supreme Court that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as "principle of multiplier" has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident.

18. On the aforesaid touchstone applying the multiplier, as expounded by the Supreme Court in the case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr.**,³ assuming that the applicant fell in the age bracket of 41 to 45 years, the appropriate multiplier would be 14. The loss of income would thus be Rs.1,68,000/-. To account for the future of prospects, 25% of the income is required to be added as the applicant was above 40 years of age. Thus the total loss of future earning would be Rs.2,10,000/-

19. Under the head of non pecuniary damages, on a conservative estimate, the applicant is entitled to a sum of Rs.10,000/- each towards pain and suffering, loss of amenities of life and loss of expectation of life. The applicant is thus entitled to a

² 2017, SCC 351

³ (2009) ACJ 1298

total compensation of Rs.2,70,000/- under the following heads :

Head		Amount (in Rs.)
1.	Medical expenses, extra nourishment etc.	30,000/-
2.	Loss of Future earning	2,10,000/-
3.	Pain and Suffering	10,000/-
4.	Loss of amenities of life	10,000/-
5.	Loss of expectation of life	10,000/-
	Total	2,70,000/-

20. The tribunal was persuaded to award interest on the amount of compensation from the date of the order. It was, inter alia, observed that the appellant -applicant was responsible for the delay in disposal of the proceeding and, therefore, the applicant cannot be allowed to take benefit of his own wrong. Mr. Gangal, the learned counsel for the applicant would urge that these observations of the learned Member of the tribunal are not completely borne out by the record. The number of adjournments which the applicant had obtained were matched by the number of adjournments sought on behalf of the respondent No.1 - insurer. Hence, the applicant alone could not have been penalized by not awarding interest from the date of the application, which is the norm.

21. Section 171 of the MV Act, 1988 vests with the tribunal the discretion to award interest on the amount of compensation from such date not earlier than the date of making the claim, as well as the rate at which such interest shall be payable. Ordinarily, the interest is awarded from the date of the application. In the case at hand, indisputably, the applicant is also responsible for the delay in disposal of the application for compensation. At the same time, the conduct of respondent No.1 was not wholly unblameworthy. The respondent No.1 also contributed to the delay. In the circumstances, it would be appropriate to direct that the amount of compensation shall carry interest from 1st January, 2005, instead of the date of the impugned judgment and award. Hence, the following order.

ORDER

- 1.** The appeal stands partly allowed with costs.
- 2.** The impugned judgment and award stands modified as under :

The respondent/opponent Nos. 1 and 2 do jointly and severally pay a sum of Rs.2,70,000/- along with interest @ 6% per annum from 1st January, 2005 till realization, to the applicant.

- 3.** The amount already deposited by the respondent/

opponents shall be deducted from the amount of compensation as modified by this order.

- 4.** Award be drawn accordingly.

(N. J. JAMADAR, J.)