

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

FIRST APPEAL NO. 213 OF 2021

APPELLANT : Vinod s/o Bhimrao Bhalavi
Aged about 26 years, Occ: Labour
At present Nil,
R/o Dasur, Tq. Morshi,
District Amravati.

VERSUS

RESPONDENTS : 1.Maharashtra State Road Transport
Corporation through Divisional Officer,
Division Officer, Shivaji Nagar, Amravati.

As per order of Registrar (J) dated 11.09.2019 the matter is dismissed against respondent no.2

2. Sanjay S/o Pralhad Khande,
Age Major, Occ: Service,
(Driver – MSRTC),
R/o S.T. Depot, Morshi, Tq. Morshi,
Dist. Amravati.

Ms Sharma, Advocate h/f Shri P.R. Agrawal, Advocate for appellant.
Ms Bhagyashri Reddy, Advocate h/f Shri V.H. Kedar, Advocate for respondent no.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 16th FEBRUARY, 2022

ORAL JUDGMENT :

. The appellant (hereinafter referred to as “the claimant”)
has challenged the judgment and award dated 11.11.2016 in Motor

Accident Claim Petition No.9 of 2011 passed by the learned Member, Motor Accident Claims Tribunal, Amravati (herein after referred to as “the Tribunal”). By the impugned judgment the Tribunal has awarded compensation of ₹5,06,000/- with interest 7.25% per annum from the date of the application till final realization.

2. The brief facts necessary to decide the appeal are as under:

The claimant, who was 28 years of age had sustained injuries in a motor vehicular accident involving bus bearing MH-31-AP-9063 owned by the respondent no.1-Maharashtra State Transport Corporation (MSRTC). The claimant alleged that the accident was caused due to rash and negligent driving by driver of the said bus. The injuries sustained in the accident has resulted in permanent disablement. The claimant alleged that prior to the accident he was employed as an agricultural labourer and was earning ₹150/- to ₹200/- per day. The claimant further alleged that he is unable to work as a result of amputation of his right knee. The claimant alleged that he is entitled for compensation of ₹16,35,000/- but restricted his claim to ₹1,00,000/-.

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3. The respondent no.1 denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The respondent no.1 also denied that the injuries sustained in the accident had affected earning capacity of the claimant.

4. The Tribunal after considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal has also observed that the claimant had sustained permanent disablement to the extent of 80%. The Tribunal held that the claimant had not produced any document to prove his monthly or annual income and hence computed the loss of earning on the basis of notional income of ₹3,000/- per month. The Tribunal also awarded compensation of ₹11,400/- towards medical expenses and ₹5,000/- towards pain and suffering. The Tribunal has thus awarded total compensation of ₹5,06,000/-. Being aggrieved by the judgment and award, the claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Ms Sharma, learned counsel for the appellant/claimant, submits that claimant was a young man of 28 years of age and was

working as an agricultural labourer and earning of ₹150/- to ₹200/- per day. She contends that the claimant was earning ₹6,000/- per month and hence the Tribunal has erred in computing the loss of earning on the basis of notional income of ₹3,000/-. She further submits that the Tribunal has not considered the fact that amputation of right leg above knee has affected earning capacity of the claimant. She further submits that the compensation awarded towards pain and suffering is also very meager. She submits that the compensation awarded by the Tribunal is not just and reasonable. In support of her contentions, she relied on the decisions of Hon'ble Apex Court in the cases of Jagdish Vs. Mohand and others reported in 2018(4) SCC 571, Erudhya Priya Vs. State Express Transport Corporation Ltd. reported in 2020 AIR (Supreme Court) 4284 and Mohan Soni Vs. Ram Avtar Tomar and others reported in 2012 AIR (Supreme Court) 782: 2012(2) SCC 267.

6. *Per contra*, Ms Bhagyashri Reddy, learned counsel for the respondent no.1 submits that accident was caused in the year 2010. The claimant had not produced any documentary evidence to prove his income. She further contends that the Tribunal has rightly computed

the loss of earning on the basis of notional income of ₹3,000/- per month, which was minimum wage payable in the year 2013. She contends that the compensation awarded is just and reasonable and impugned judgment and award does not warrant any interference.

7. I have perused the record and considered submissions advanced by learned counsel for the respective parties. The short point for consideration is, “whether the compensation awarded by the Tribunal is just and reasonable ?”

8. It is well settled that the Tribunal as well as the Court is under an obligation to award just and reasonable compensation. In **Pappu Deo Yadav Vs. Naresh Kumar and others** reported in **AIR 2020 SC 4424; MANU/SC/0696/2020** the Hon’ble Apex Court has reiterated that “just compensation” should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, monetary compensation is the manner known to law, whereby society assures some measure of

restitution to those who survive, and the victims who have to face their lives.

9. In the instant case the evidence adduced of claimant reveals that he was a labourer. He used to work as an agricultural labourer and earn ₹200/- per day i.e. ₹6,000/- per month. The Tribunal has disbelieved the statement on the ground that the claimant has not adduced any proof of income. Considering the nature of employment, it is difficult to expect the claimant to adduce documentary evidence and proof of his income. The Tribunal was therefore, in my considered view, not justified in disbelieving the statement of the claimant and further in computing the loss of earning on the basis of income of ₹3,000/- per month.

10. It not in dispute that his right leg above knee has been amputated due to the injuries sustained in the said accident. The claimant has deposed that he has not been able to work due to the permanent disablement occasioned by the accident. The extent of permanent disability suffered by the claimant would certainly affect his earning capacity. Hence, in addition to medical expenses, loss of

expectation of life, pain, suffering and trauma resulted from the accident, the claimant is also entitled for loss of income including future income.

11. In the case of **Pappu Deo Yadav (supra)** the Hon'ble Apex Court has reiterated that while assessing the compensation the Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In **Mohan Soni (Supra)** the Hon'ble Apex Court has referred to the decision in **Raj Kumar v. Ajay Kumar and another**, reported in **(2011) 1 SCC 343**, wherein the Hon'ble Apex Court has held that in assessment of the effect of the permanent disability on the actual earning capacity involved in three steps: first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is, to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally

disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

12. In the instant case the Tribunal while computing the loss of income the Tribunal has not considered the loss of future income, the Tribunal has also not awarded any compensation towards loss of life expectation and considering the nature of injuries, the Tribunal has awarded a very meager amount towards pain and suffering. The compensation awarded by the Tribunal therefore cannot be just and reasonable compensation.

13. The evidence on record indicates that the claimant, an agricultural labourer, was earning ₹6,000/- per month, i.e. ₹72,000/- per annum. The claimant was 28 years of age and considering the age of the claimant, 40% of the actual income needs to be added towards

future prospect. Thus, the actual income of the claimant works out to ₹1,00,800/-. There is no evidence on record to show that claimant was married and had dependants hence 50% needs to be deducted towards personal expenses.

14. The claimant was an agricultural labourer. His right leg has been amputated above knee. He has deposed that as a result of accident he has not been able to work as a labourer and earn his livelihood. The evidence of the claimant therefore clearly reveals that permanent disability has affected and impacted his total earning capacity. The Tribunal was therefore not justified in applying percentage of permanent disability as a percentage of economic loss or earning capacity. Taking into account the percentage of functional disability, disability has to be assessed at 100%. Hence, claimant is entitled for ₹50,400 X 17, which works out to ₹8,56,800/-. In addition, the claimant is also entitled for compensation of ₹1,00,000/- on account of pain, suffering and loss of amenities of life. The total claim comes to ₹9,56,800/- in addition to ₹3,000/- towards other miscellaneous expenses. The claimant is, therefore, entitled for compensation as under:-

I.	Loss of dependency—	
i.	Annual income	₹6,000 × 12 = ₹72,000/-
ii.	Addition of 40% towards future prospect	₹28,800/-
iii.	Total income	₹1,00,800/-
iv.	Deduction of 50% towards personal expenses	₹50,400/-
v.	Total income after deducting personal expenses	₹50,400/-
vi.	Loss of dependency on applying multiplier of 17	₹8,56,800/- (50,400 × 17)
II.	Compensation payable on other conventional heads	
i.	Pain and suffering	₹50,000/-
ii.	Loss of expectation of life, marriage prospects etc.	₹40,000/-
iii.	Medical expenses	₹11,400/-
Total compensation payable—		₹9,58,200/- Rounded up to ₹ 9,60,000/-

15. Under these circumstances and in view of the discussion supra, the appeal is allowed. It is held that the claimant is entitled for compensation of ₹9,60,000/- with interest at the rate of 7.25% per annum from the date of claim petition till realization. The respondent no.1 to deposit the enhanced amount of compensation along with

interest within a period of six weeks from the date of this order. The amount so deposited be paid to the claimant on verification of his identity.

16. The Appeal stands disposed of in above terms. The Civil Applications, if any, stand disposed of.

JUDGE

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