IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2967 OF 2019

Anil s/o Kushaba Bidkar
Age : 21 years, Occu. : Agri. & Labour Work,
R/o. : Mandve (Bk), Tq. Sangamner,
Dist. Ahmednagar. .. Appellant
(Orig. Claimant)

Versus

1. M/s Jindal Poly Films Ltd.,
258 Km. Stone, National Highway-3,
Nashik – Igatpuri Road, Mundhegaon,
Igatpuri, Tq. Igatpuri, Dist. Nashik.

2. The National Insurance Co. Ltd.
Ambar Plaza, Station Road, Ahmednagar,
Tq. & Dist. Ahmednagar .. Respondents
(Orig. Opponents)

Mr. K. N. Shermale, Advocate for the Appellant.
Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Respondent No. 1.
Mr. D. V. Soman, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 06th September, 2023.

Date on which order pronounced : 06th November, 2023.

ORDER :-

. The present appeal is preferred by the claimant in motor accident claim petition seeking compensation towards injuries received in an accident and permanent disability suffered by him. A challenge is only to the extent of not allowing the total claim of the claimant. The learned Member, M.A.C.T. vide judgment and order dated 14.08.2018 allowed the claim partly. It is ordered that the appellant be paid compensation of Rs. 7,49,089/- including no fault liability amount of Rs. 25,000/- with interest at the rate of 8% per annum from the date of filing of the claim till the realization of the amount. Rs. 10,000/- is ordered towards cost.

2. The claimant by way of this appeal has raised the ground that though the disability is only to the extent of 70%, however, there is loss of 100% earning capacity as in an accident the claimant suffered injury and became permanently disabled as his leg is amputated. His leg is amputated. The appellant was doing job of agriculture and labour work. In view of disability now he cannot work as before. The income of the claimant is not properly considered. He further claimed that towards medical expenses also the Tribunal has not awarded any amount. The Tribunal has also not considered the pain and suffering. The Tribunal has wrongly considered monthly income only as Rs. 2,000/-. The Tribunal has not added future prospects.

3. Learned advocate Mr. Shermale for the appellant vehemently argued the appeal. He submits that the appellant has claimed Rs. 13,00,000/- plus Rs. 20,000/- towards no fault liability. His income

was Rs. 5,000/- per month. However, the same is not accepted by the Tribunal. His right leg is required to be amputated from the knee. Considering his injury it ought to have been accepted that he has lost 100% earning capacity. He further submits that, considering his income to be Rs. 5,000/- per month, he should be paid more compensation and future prospects on the said income. The income of Rs. 2,000/- per month taken by the Tribunal is even lesser than minimum wages. The agricultural income is also not considered by the Tribunal.

4. Learned advocate for the the Insurance Company opposed the appeal and submitting that, the claimant was not entitled to receive any compensation as when the accident took place the claimant was on the motorcycle with three persons on it. Thus, it is a case of contributory negligence. In the alternative, he submitted that the Tribunal has granted just and reasonable compensation. There was no prayer for loss of future earning and therefore, there was no question of granting future prospects by the Tribunal.

5. Learned advocate Mr. Shaikh for respondent No. 1 adopted argument of the Insurance Company and prayed for dismissal of the appeal.

6. On going through the judgment it is seen that, the Tribunal at the outset recorded the fact of negligence of the appellant. The liability of the Insurance Company is not disputed since the Insurance Company has not preferred any appeal against the impugned judgment. This Court only has to consider the quantum of compensation as to whether it is rightly granted or it should have been granted as claimed by the appellant. Therefore, the judgment is considered only to the extent of quantum of compensation. The Tribunal Considered that the claimant used to get labour work for 9-10 days in a month. The land of the appellant is only of 1.5 acres and the same is cultivated by his parents and himself. Considering the work of 10 days in a month, the Tribunal has accepted his income to be Rs. 1,500/- at the rate of Rs. 150/- per day as per the daily wages. His income from the agriculture is held to be only Rs. 5,00/- per month. Thus, it is considered monthly income of Rs. 2,000/- and annual income of Rs. 24,000/-. The Tribunal has considered 70% loss of income based upon the certificate issued by the doctor. The Tribunal further held that the relevant multiplier of 18 based on the judgments in the cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **MANU/SC.0606/2009** and **National Insurance Company Ltd. Vs. Pranay Sethi and others** reported in **MANU/SC/1366/2017**. About the hospital expenses the Tribunal considered that the appellant was

admitted for about 10 days. The leg is amputated from knee is accepted. It is held that the appellant could not have worked for five months after the amputation and therefore, his loss was considered Rs. 10,000/- during the treatment. Towards hospital and medical expenses the Tribunal has granted Rs. 1,16,689/- including pharmacy bill whereas, the claimant had given the hospital bills of Rs. 1,45,336/-. For diet Rs. 10,000/- is granted. For pain and suffering the Tribunal awarded Rs. 1,00,000/-. Thus, the Tribunal has considered the compensation as given below :

(a)	Loss of future earnings on account of permanent disablement	Rs. 3,02,400/-
(b)	Earning loss during treatment	Rs. 10,000/-
(c)	Expenditure on medicines and treatment	Rs. 1,16,689/-
(d)	Expenditure on special diet	Rs. 10,000/-
(e)	Expenditure on Conveyance	Rs. 10,000/-
(f)	Compensation on account of pain and suffering	Rs. 1,00,000/-
(g)	Compensation on account of loss of amenities and enjoyment of life	Rs. 1,00,000/-
(h)	Loss of marriage prospects	Rs. 1,00,000/-
	Total	**Rs. 7,49,089/-**

7. Thus, this Court has to only consider as to whether the amount

of monthly income is properly considered. This Court finds that about the medical expenses, medicines, expenditure on special diet, expenditure of conveyance, compensation on account of pain and suffering, compensation on account of loss of amenities and enjoyment of life and loss of marriage prospects under these heads the Tribunal has rightly awarded the amount. However, about the monthly expenses this Court needs to consider as to whether the Tribunal has taken the monthly income of Rs. 2,000/- is proper and correct. Depending upon that the Court needs to consider loss of earning during the treatment.

8. Learned advocate Mr. Shermale for the appellant during the course of argument relied upon the following judgments.

(a) **Abhimanyu Partap Singh Vs. Namita Sekhon and another** in **Civil Appeal No. 4648/202**2 decided by the Hon'ble Apex Court.

(b) **Kubrabibi and ors. Vs. Oriental Insurance Co. Ltd. and ors.** in **Civil Appeal No. 5461/2023**.

(c) **Akshay @ Vikas Ramesh Chavan Vs. Kailas Vitthalrao Shinde and another** in **First Appeal No. 2342/2018.**

(d) **Sri Anthony Alias Anthony Swamy Vs. The**

Managing Director, K.S.R.T.C. reported in **(2020) 7 SCC 161.**

(e) **Pappu Deo Yadav Vs. Naresh Kumar and others** reported in **(2020) AIR (SC) 4424**.

(f) **Jithendran Vs. The New India Assurance Co. Limited and another** reported in **(2021) 12 Scale 703**.

9. In the case of **Abhimanyu Partap Singh** (supra), the Tribunal had calculated the compensation under various heads. The same was enhanced by the High Court. The Hon'ble Apex Court looking to the nature of injuries granted further medical expenses including attendant charges and use of diapers due to loss of senses. The High Court granted transportation charges only once. The Hon'ble Apex Court held that the claimant will require transportation charges and motorized vehicle for whole of his life. The charges of transportation in future were also granted by enhancing the lump-sum amount from Rs. 1,00,000/- to Rs. 2,50,000/-. Here the same is not the case. Here only leg is amputated. So only the compensation for pain and suffering needs to be considered which is rightly considered by the Tribunal.

10. In the case of **Kubrabibi and ors.** (supra), the Tribunal had granted compensation by considering the income of the deceased who was working as a driver and mechanic at the rate of Rs. 6,000/- per

month. The High Court reduced the amount of compensation by reducing the monthly income to Rs. 3,000/-. The multiplier was also wrongly applied of 15 instead of 16. The total compensation was thus reduced. The Hon'ble Apex Court restored the award of the Tribunal by setting aside the judgment of the High Court. This judgment is in the facts of that case.

11. In the case of **Akshay @ Vikas Ramesh Chavan** (supra), this Court held that the Tribunal had given much emphasis on the percentage of the disability as stated by the doctor. The disability was of 45% of permanent nature. In that case also right leg below thigh was amputated. Other leg was badly damaged. The claimant was working as a cleaner. Since he lost both the legs, no owner would engage him as a cleaner. In that case the income of the claimant was considered to be Rs. 6,000/- per month. This Court in that case held that though disability was only of 45%, however, loss of earning capacity was 100% in view of amputation of leg. Considering the facts of this case here the Tribunal ought to have taken the disability to the percent of 100% looking to the judgment in this case.

12. In the case of **Sri Anthony alias Anthony Swamy** (supra), the Hon'ble Apex Court held that loss of earning need not be considered in the ratio to the disability. In that case the compensation was enhanced.

13. In the case of **<u>Pappu Deo Yadav</u>** (supra), the Hon'ble Apex Court held that the permanent disability does not only impose physical limitations, but inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he was born into. It is further considered that, the degrees of dependence on others, robbed of complete personal choice or autonomy forever and this factor also needs to be considered. In this case the same is applicable.

14. In the case of **<u>Jithendran</u>** (supra), in paragraph No. 16 it is held as under :

> 16. As noted earlier, the impact on the earning capacity for the claimant by virtue of his 69% disability must not be measured as a proportionate loss of his earning capacity. The earning life for the appellant is over and as such his income loss has to be quantified as 100%. there is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home. In such circumstances, his loss of earning capacity must be fixed at 100%.

15. It is clear that, the percentage of disability is not the only factor. The loss of income is not exactly proportionate to disability, but is more than the percentage of disability. In the present case, it is accepted that the appellant was working as a labourer. The loss of earning capacity

therefore needs to be taken as 100%. The Tribunal committed an error in taking the loss only to the extent of 70%. The Tribunal also failed in holding that the claimant was getting employment only for 8-10 days in a month while calculating the earning Rs. 1,500/-. The earning capacity ought to have been taken considering that claimant gets the employment at least on 20 days in a month. Thus, the income ought to have been considered for doing labour work at least Rs. 3,000/- from labour work and Rs. 500/- from agriculture. The income ought to have been calculated as Rs. 3,500/- per month. Thus, annual income ought to have been taken to be Rs. 42,000/-. The Tribunal taken only 70% loss of income instead of 100% loss of income. Thus, the loss of income was Rs. 42,000/-. The multiplier of 18 is rightly applied. There is no dispute. Future prospects ought to have been added of Rs. 21,000/-. The total amount would be thus Rs. 42000/ + Rs. 21000/- = Rs. 63000/-. The amount ought to have been considered as 63000 × 18 = 11,34,000/-. Thus, the amount of Rs. 3,02,400/- towards loss of future earning needs to be considered as Rs. 11,34,000/-. So far loss of earning during treatment is concerned, it ought to have been considered Rs. 3,500/- every month for five months as Rs. 17,500/-.

16. Thus, the award needs to be modified towards loss of future

earning as Rs. 11,34,000/- plus loss of earning during treatment Rs. 3,500/-. Thus, the appellant is entitled to additional Rs. 8,31,600/- Towards loss of earning for five months addition of 7,500/- need to be paid. The respondents also shall pay interest on the said amount from the date of claim till actual realization. The appeal is allowed in above terms. There is no need to change other figures as this Court finds that, the Tribunal has rightly considered and rightly awarded the compensation under those heads.

17. In view of the above, the appeal is disposed off.

(KISHORE C. SANT, J.)

P.S.B.