

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

FIRST APPEAL NO. 2087 OF 2016.

Sanket S/o. Suryakant Pathak,
Age 21 years, Occ. Education,
R/o. Kajala Tq. & Dist. Osmanabad. .. APPELLANT.

VERSUS

1. Sachin s/o. Dhanraj Katariya,
Age Major, Occ. Business,
R/o. Uruli Kanchan, Tq. Haveli,
Dist. Pune.
2. The Manager,
ICICI Lombard General Insurance Co.Ltd.,
ICICI Bank Towers, Bandra Curla Complex,
Bandra (East) Mumbai – 400 051.
.. RESPONDENTS.

Mr. S.B. Choudhari, Advocate for appellant.
Mr. A.G. Chaudhari, Advocate for respondent No.2

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 8TH AUGUST, 2023
PRONOUNCED ON : 18TH AUGUST, 2023.**

JUDGMENT:-

The appellant/original claimant impugns the judgment and award dated 14.1.2016 passed by the Motor Accidents Claim Tribunal Osmanabad, in MACP No. 300 of 2009 in this appeal filed under Section 173 of the Motor Vehicles Act.

2. The appellant had approached the Tribunal under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 8 Lakhs from owner and insurer of the offending vehicle i.e. Dumper bearing

MH-12/DT 5922. The contention of the claimant is that, while he was proceeding on motorcycle towards his house, at about 1.45 a.m. the dumper was parked on Pune to Sinhagad road without parking lights. It was not visible at night time. Resultantly, the motorcycle of claimant collided to dumper. In said accident he sustained multiple injuries like Polytrauma with head injury, chest injury. An offence was registered against the driver of the offending vehicle. Initially, the appellant was admitted at Dinanath Mangeshkar hospital for the period from 21.11.2008 to 19.12.2008. Although he was treated as indoor patient for a month, he suffered permanent disablement. He lost vision of his right eye. The vision of left eye is also affected. There was fracture of 3 ribs that has reduced his physical strength. At the time of accident, he was pursuing his studies to B.Sc. Second year. However, as a result of permanent disablement, he lost his total earning capacity.

3. The claim was contested on behalf of the respondents. The claimant, in his endeavour to establish case, recorded his own evidence and also recorded evidence of Dr. Nagendra Rigoti to prove discharge card and medical bills. He has further examined Dr. Govind Kokate to prove the permanent disablement pertaining to the eye sight and Dr. Ajay Maindarkar to prove the disability relating to the fracture and convulsion. No evidence is recorded on behalf of the respondents. The Tribunal recorded a finding that the accident occurred due fault on the part of the driver of the dumper and passed an award of Rs. 2,21,000/- alongwith interest @ 7 % p.a. in favour of the claimant.

4. Mr. Chaudhari, learned counsel appearing for the applicant submits that the claimant had suffered severe injuries resulting into loss of vision of his right eye. Even his left eye is also affected. Due to multiple fracture and head injury the claimant lost is physical strength. He has undergone long drawn medical treatment. Initially during the

period from 21.11.2008 to 11.12.2008 thereafter 19.12.2008 to 09.01.2009 he was admitted to Dinanath Mangeshkar Hospital, Pune, where he has undergone multiple surgeries. Even thereafter, the treatment continued. By inviting attention of this court at Exh.46, he submits that during the period from 11.8.2014 to 21.8.2014 the appellant/claimant was further admitted to Ashwini Sahakari Runganalaya at Solapur, where he was treated for post traumatic Rehenocitis with meningitis.

5. The in-patient detailed bills are also produced on record which shows the details of the treatment from 12.6.2014 to 23.7.2014 and 11.8.2014 to 28.8.2014. Mr. Chaudhari would further submit that two doctors have testified about permanent disablement suffered by the claimant. PW-3 Dr. Govind Kokate, who is ophthalmologist has stated about the loss of vision of right eye and partial loss of vision of the left eye, for which the permanent disablement of 45% has been assessed. He further submits that PW-4 Dr. Ajay Maindarkar testified about the physical disablement emerging from the head injury and fracture of ribs. He assessed the permanent disability 25% for mild occasional convulsion. However, the Tribunal completely ignored the aforesaid bills.

6. Mr. A.G. Chaudhari, learned counsel for respondent No.2 Insurance Company would submit that since there is no pleading regarding the medical treatment subsequent to discharge from Dinanath Mangeshkar Hospital at Pune, the tribunal has refused to consider the medical bills relied upon by the claimant. He would submit that the treating doctor is not examined before the Tribunal. Both the doctors are from local address who have certified disability. He justifies the observation of the Tribunal to discard the evidence of both the doctors. He submits that the tribunal has awarded just and proper compensation.

7. Having considered the submissions advanced by the respective advocate for the parties, it is apparent that there is no dispute about the accident and consequential injuries suffered by claimant. The issue before this court is, regarding the assessment of just compensation. It appears that the claim petition was filed on 27.8.2009 i.e. within the period of 9 months after the accident. The claimant continued his medical treatment. The evidence affidavit at Exh.23 has been filed in the year 2012. The documents on record show that even thereafter the claimant continued his medical treatment. Immediately after the accident, he was admitted to Dinanath Mangeshkar Hospital at Pune, where he was treated during the period from 21.11.2008 to 12.12.2008 and 19.12.2008 to 09.01.2009. The detail medical bills are placed on record at Exhibit 39 & 40. It appears that he was continuously under medical supervision from the date of the accident. He was latter on admitted in Ashwini Hospital at Solapur and treated for post traumatic rhinorhea, initially for the period from 12.6.2014 to 23.7.2014 and thereafter from 11. 08. 2014 to 21. 08.2014. The copy of the discharge card is placed at Exh.46. The claimant has relied upon the evidence of PW-2 Nagendra Reghoti, a clerk, authorized by Ashwini Hospital Solapur. He testified about the medical treatment advanced to the claimant during the period from 12.6.2014 to 21.8.2014 under the supervision of a neuro surgeon Dr. Sachin Bhalerao. The witness proved the discharge cards Exhibits 46 and 47 and medical expenses / bills Exhibits 51, 52 and 53 for Rs. 75,776/-, Rs. 1,64,958/- and Rs. 1,32,822/- respectively. All the medical bills are proved from authorized person from reputed hospital. Hence there is difficulty to accept the same. Mr Choudhary learned advocate submits that doctor is not examined to prove that subsequent medical treatment was consequential to accidental injuries. However, looking to very nature of subsequent treatment advanced to claimant for neurological disorders, there is no reason to draw any other conclusion except that treatment is consequential to injuries sustained by claimant in

subject accident. Conversely, no evidence is brought by respondents to indicate that claimant was treated for ailments unconcern with accidental injuries. It is trite that appreciation of evidence in cases pertaining to compensation under motor vehicle act are governed by principle of preponderance of probability. Strict proof would not be required on each aspect, particularly when documentary evidence is placed on record from reputed hospitals.

8. The evidence of the claimant shows that he was pursuing his education in B.Sc. Second year at the time of accident. The copies regarding educational qualification are placed on record at Exh.71 which shows that he had completed computer course of MH-CIT in the year 2004-05 and he was prosecuting his education in B.Sc at Parshuram Bhau college at Pune. He states that he has lost vision of right eye and even vision of left eye is also affected. He states about fracture to 3rd to 10th rib. He states that because of the head injury, he is suffering various problems. He states that he was earning Rs. 6000 P.M. prior to accident

9. Evidence of PW-3 Dr. Govind Kokate shows that the claimant has suffered optic atrophy in right eye and optic disc pellar damage to left eye. He proved the contents of the certificate of permanent disability at Exh.57, whereby, he certifies 45% permanent disablement due to loss of vision. Nothing could be elicited during his cross examination by which the evidence of PW-3 can be disbelieved. Similarly, Dr. Maindarkar, who is orthopedic surgeon deposed that he advanced treatment to the claimant towards convulsion. He issued disability certificate exh.59 by which he assessed 25% permanent disablement.

10. Perusal of the aforesaid evidence clearly establish that the claimant has suffered permanent disablement at the young age and he has lost his earning capacity. It is, therefore, necessary to re-evaluate the

entire evidence and determine just compensation.

11. The Tribunal observed that the evidence of PW-3 and PW-4 cannot be considered since both of them have not treated the claimant. It is difficult to accede with the opinion of the learned tribunal. It is not disputed that PW-3 and 4 are qualified medical practitioners. PW-3 Dr. Govind Kokate is qualified MBBS, DOMS and he is running the Eye Hospital at Osmanabad. He testified that he done Fundoscopy of both the eyes of the claimant. He perused the previous reports and then, assessed the disability. He states that there is loss of 100% vision of right eye and left eye is also affected. He admits that if the optic nerve is damaged, the eye sight is likely to be damaged. Similarly, PW-4 Dr. Ajay Maindarkar, is orthopedic surgeon. There is ample evidence to show that head injury was suffered by claimant. The discharge card of Dinanath Mangeshkar hospital and treatment papers show nature of injuries and medical treatment advanced to claimant. The subsequent documents regarding medical treatment advanced at Ashwini Hospital supports case of claimant regarding neurological disorders. Dr. Maindarkar certified 25% permanent disability for mild and occasional convulsion on the basis of his examination in the year 2009.

12. Pertinently, the claimant had suffered fractures of the multiple ribs. If the injuries suffered by the claimant are taken into consideration, there is no difficulty to accept that the claimant has suffered permanent disablement on account of loss of vision and also mild convulsions. The certificates submitted on behalf of the claimant show that he was pursuing education in B. Sc. And he had completed course of computer operations viz. MS-CIT. Therefore, the notional income of the claimant cannot be estimated less than Rs. 6,000/- p.m. Since the claimant has suffered complete loss of Vision of right eye and partial loss of vision of left eye so also, he is suffering convulsions owing

to neurological disorder, his future loss of earning will have to be estimated at least 50%.

13. It is now well settled that in the injury cases, the loss of future prospects can be considered. Since the claimant was aged 21 years at the time of accident, 40% amount has to be added to his income by way of future prospects.

14. The documentary evidence on record shows that as the claimant was under continuous medical supervision. Initially he was treated at Dinanath Mangeshkar Hospital during the period of 21.11.2008 to 11.12. 2008. The discharge card of Ashwini Hospital shows that he was treated for the period from 12.6.2014 to 23.7.2014. Thereafter, from 11.08.2014 to 28. 08. 2014. It is apparent that the claimant was under continuous medical supervision after accident. Meanwhile he was treated by local doctors as apperent from evidence of PW. 3 and PW. 4 In that view of the matter, the claimant is entitled for reimbursement of the entire medical bills placed on record, so also some future medical expenses will have to be added by way of guess work.

15. The claimant has suffered loss of vision and so also, he is a patient of mild convulsions as proved by the evidence of PW-3 and PW-4 coupled with the documentary evidence. Therefore, the claimant would be entitled for compensation towards non-pecuniary heads like pain and suffering, permanent disablement, loss of amenities and expectation of life, loss of marriage prospects, attendant charges etc. In that view of the matter, it would be appropriate to assess the compensation as per the chart indicated below in tabular form: -

Sr. No.	Particulars	Amount
1.	Annual income of the claimant Rs. 6000 x 12 =72,000/- Add 40% towards future prospects	Rs.72000 Rs.28800 Rs.1,00,800/-
2.	Apply multiplier of 18 i.e. 1,00,800 x 18	Rs.18,14,400/-
3.	50% loss of future earning	Rs.9,07,200/-
4.	Towards permanent disablement	Rs. 1,00,000/-
5.	Pain, suffering, loss of amenities in life and loss of marriage prospects	Rs. 1,00,000/-
6.	Attendant and transportation charges	Rs. 50,000/-
7.	Future medical expenses	Rs. 1,00,000/-
8.	Actual medical expenses at Dinanath Hospital at Pune	Rs. 2,91,145/-
9.	Actual medical expenses at Ashwini Hospital Rs.75,776+Rs.1,64,958+Rs. 1,32,822/-	Rs. 3,73,556/-
	Total	Rs. 19,21,701/-

16. In view of above, appeal is deserves to be allowed. Hence, the following order :-

- [i] The appeal is partly allowed.
- [ii] The judgment and Judgment and award passed by the MACT, Osmanabad in MACP No. 300 of 2009 is modified
- [iii] The respondent Nos. 1 and 2 shall jointly and severally pay a sum of Rs.19,21,701/- (Rupees Nineteen lakh twenty one thousand seven hundred and one only) to the claimant (including NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.
- [iv] Compensation already paid/deposited in terms of the award passed by the Tribunal shall be appropriated.

- [v] Award be drawn accordingly on payment of deficit court fees, if any.
- [vi] On deposit of compensation by the respondent Insurance Company, it be disbursed to the claimants account directly through bank transfer.
- [vi] First appeal is disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-