

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

**FIRST APPEAL NO. 1253 OF 2009**

New India Assurance Company Limited  
Having Head and Registered office at  
New India Assurance Building,  
87, M.G. Marg, Fort, Mumbai  
Divisional Office at Aurangabad

... APPELLANT  
[Ori. Respondent No.2]

**V E R S U S**

1. Mahadeo Yashwant Mane  
Age 33 yrs, Occ. Alleged as Nil  
R/o Shripatraiwadi  
Tq. Ambejogai, Dist. Beed. **Respondent/  
Ori. Claimant**
  
2. Shaikh Ajmer Shaikh Rasheed  
Age Major Occ. Owner of Auto rickshaw  
R/o Patoda Mamdapur  
Tq. Ambejogai, Dist. Beed. **[Ori. Respondent No.1]**

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Mr. M. M. Ambhore, Advocate for Appellant  
Mr. S. S. Dargad, Advocate for Respondent No.1 (Absent)  
Mr. Sachin Deshmukh, Advocate for Respondent No.2 (Absent)

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**CORAM : Y. G. KHOBRAGADE, J.**

**DATE : 30.06.2023**

**JUDGMENT**

1. Present appeal pertains to 2009 and since then it is pending for admission. After the matter was called out, the learned counsel for the appellant argued the matter for a

considerable period but none appeared for the Respondents. Therefore, the matter was kept back. Even after second call, none appeared for the Respondents. Therefore, the matter being old, is decided finally at the stage of the admission.

2. Heard Mr. M. M. Ambhore, the learned counsel appearing for the appellant at length.

3. The Appellant Insurance Company has presented this appeal against the judgment and award dated 30.01.2008 passed by the Motor Accident Claims Tribunal, Ambejogai, District Beed, in M.A.C.P No.29/2007, wherein the respondent No.1/injured was awarded compensation to the tune of Rs.1,47,000/- with interest at the rate of 7.5% p.a., inclusive of no fault liability under Section 140 of the Motor Vehicles Act.

4. The Appellant/ Insurance company is the original Respondent No.2. The Respondent No.1 is the original claimant, whereas the respondent No.2 is original Respondent No.1. For the sake of brevity, the parties to the present appeal would be referred in their original capacity as claimant and the respondents.

5. The Claimant filed M.A.C.P No.29/2007 on ground that,

on 18.10.2006, at about 12.15 p.m. to 12.30 p.m., he was proceeding, being a pillion rider, on motorcycle bearing No. MH-23-D-9307 driven by Shri Gajanan Balasaheb Chavan and at the relevant time they reached near Siddhi Hotel, Ambajogai, Sakhar Karkhana Road. At that time offending vehicle Ape auto-rickshaw bearing No. MH-23-H-6978 came from opposite direction and gave dash to the motorcycle, due to which he and the rider fell down and sustained grievous injuries. The claimant was admitted in Civil Hospital, Ambejogai in an unconscious state. Subsequently, he was hospitalized at Yadav Hospital from 19.10.2006 to 11.11.2006. According to the claimant, the present Respondent no. 2, who is owner and driver of the offending vehicle was driving the vehicle in a rash and negligent manner. Hence, the accident occurred. Accordingly, First Information Report No.353/2006 was registered against the respondent No.2 for the offenses under Sections 279, 338 of the Indian Penal Code. The respondent No.2 owned auto-rickshaw which is duly insured with the present Appellant – Insurance Company.

6. The claimant submitted that accident occurred due to rash and negligent driving on the part of the Respondent No. 2. Surgery was performed twice on his knee/right leg and implant

inserted. He sustained 15% permanent disability. At the time of accident, he was 32 years of old. He was working as a peon with one Private Company. He was drawing monthly income of Rs.2,500/-. Besides, he was drawing annual income of Rs.20,000/- from his agriculture land. Therefore, he prayed for compensation to the tune of Rs.3,00,000/-.

7. The Appellant/Ori. Respondent No. 2 filed it's Written statement and resisted the claim of the claimant. According to the Appellant/Insurance Company, the Respondent no. 2 Driver/owner did not possess valid driving licence and committed breach of policy conditions. Hence, prayed for dismissal of the claim petition.

8. The Respondent No.1/Claimant filed evidence affidavit and led oral evidence. The respondent No.1 / claimant proved F.I.R. Exh.20, Spot Panchanama Exh.21, Registration Certificate of Auto-Rickshaw Exh.22, Insurance Policy Exh.23, Disability Certificate Exh.24, AA Form Exh.25.

9. On 30.01.2008, the learned Tribunal delivered the impugned judgment and award holding that, the accident occurred due to rash and negligent driving on the part of the Respondent no. 2

Owner/Driver of the offending vehicle. Though the Insurance company claimed that, the Respondent no. 2 driver was not possessing a valid driving licence, but failed to prove the said defence. The offending vehicle was duly insured with the Appellant/Insurance company. The Respondent no. 1/ claimant sustained 15% permanent disability and underwent surgeries with insertion of implant. Therefore, considering his age, monthly income, multiplier “17” was applied as per the ratio laid down in the case of *Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another – (2009) 6 SCC 121*. Considering the Medical expenses, mental & physical agony, awarded compensation to the tune of Rs.1,47,000/- @ 7.5% p.a. inclusive no fault liability u/s 140 of the Motor Vehicle Act.

10. Adv. M. M. Ambhore, the learned counsel appearing for the appellant/Insurance Company vehemently canvassed that, the oral as well as documentary evidence proves that, the Motorcycle, on which the Claimant was pillion rider and the offending vehicle collided head on. The Claimant has not examined any independent witness to prove that, the Driver of the Auto-rickshaw was negligent while driving the same. Therefore, the Id. Tribunal ought to have held contributory negligence. However, the learned Tribunal failed to

appreciate the evidence available on record.

11. The learned counsel for the appellant further canvassed that, Respondent No. 1/ Claimant simply produced medical bills, but failed to examine either the Medical Officer or the competent person from the concerned Pharmacy to prove the Medical Bills. Yet, the learned Tribunal wrongly relied on the said bills and awarded exorbitant compensation.

12. He further submitted that, the respondent No.1 / claimant fail to examine the Medical Officer to prove the disability certificate. Yet, the learned Tribunal wrongly relied on disability certificate. Income from agriculture land as well as loss of income are not proved. Yet, the learned Tribunal granted exorbitant compensation, which is illegal and bad in law. The learned Counsel for the appellant submits that the learned Tribunal has wrongly considered the multiplier 17. As per the case of **Sarla Verma** (supra), the multiplier 16 is prescribed for the age group. Therefore, he prayed to quash and set aside impugned award.

13. Having regard to the submissions canvassed on behalf of the claimant, I have gone through the record. The Respondent No. 1

Claimant filed Evidence Affidavit and supported the contents of the claim petition. The Appellant Insurance Company cross examined the Respondent No. 1/ Claimant through its counsel. The Appellant-Insurance company failed to examine any witness to prove its stand. It is a well settled principle of law that, mere raising of pleading does not automatically prove it in the absence of substantial evidence. Therefore, the defence taken by the appellant/insurance company remained to be proved.

14. On perusal of the evidence available on record, it reveals that, on 18.10.2006, at about 12.15 to 12.30 p.m., the Respondent No.1/Claimant was pillion rider on motorcycle No. MH-23-D-9307. Shri Gajanan Chavan, the friend of the Claimant was riding the said Motorcycle. They reached near Siddhi Hotel, Ambajogai, Sakhar Karkhana Road. But at that time offending vehicle Ape auto-rickshaw bearing No. MH-23-H-6978 was coming from opposite direction and gave dash to the motorcycle, due to which the claimant and motorcyclist fell down. The claimant sustained grievous injuries and became unconscious. Initially, the Claimant was admitted in Civil Hospital, Ambajogai, but subsequently, he was shifted to Yadav Hospital from 19.10.2006 to 11.11.2006.

15. It further appears that on the day of accident, the FIR (Exh.20) bearing Crime No.353/2006 was registered against the respondent No.2 for the offence under Sections 279 and 338 of the Indian Penal Code. The Ape auto-rickshaw No. MH-23-H-6978 was duly insured with the present applicant on the day of accident. The insurance policy was in existence. The registration certificate of the offending auto-rickshaw proves that the respondent No.2 is owner and driver of offending vehicle. As per the spot Panchanama Exh. 21, the accident was occurred near Siddhi Hotel on Ambejogai to Ambejogai Sakhar Karkhana road. During the course of trial, the claimant/respondent No.1 proved injury certificate Exh.24, which proves that the claimant/respondent No.1 sustained 15% permanent disability. He incurred Rs. 35,000/- toward his Medical Treatment.

16. The claimant has filed evidence affidavit and proved that at the relevant time he was working as a Peon with an industry and drawing salary to the tune of Rs.2,500/- p.m. The claimant deposed that he was drawing yearly income of Rs.20,000/- from agriculture. The claimant produced revenue record Exh.26 and 27, which proves that the claimant owned 0.4 H.R. land and due to sustaining injury,

resulting in permanent disability, he is unable to perform agricultural activities. The learned tribunal considered the Medical expenses incurred by the claimant, loss of income, percentage of disability 15%, age of the claimant and applied "17" multiplier, as per case of **Sarla Verma**, (supra) and granted compensation to the tune of Rs.1,47,000/- as under:-

Agriculture income Rs.5,000/- including his salary of Rs.2,500/- i.e. Rs.2,500/- + Rs.2,500/- = 5,000/-. Since the claimant was 32 years old, hence, as per the ratio laid down in Sarla Verma's case, the multiplier is 17 i.e. Rs.5,000/- x 17 = Rs.85,000/-. The claimant proved medical bills to the tune of Rs.35,000/- and loss of salary of Rs.2,000/-. So also, considering future surgery and implant, Rs.2,500/- = Rs.1,47,000/-.

17. In the case of **State of Haryana and another vs. Jasbir Kaur and others**, AIR 2003 SC 3696, it has been held thus:-

*"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The*

*Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."*

18. In case of ***The Divisional Controller, K.S.R.T.C. vs. Mahadeva Shetty and another, AIR 2003 SC 4172***, it has been observed as under:

*"A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate that compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule*

*applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life the features like his age, marital status and unusual deprivation he has undertaken in his life has to be reckoned."*

19. In case of ***R.D. Hattangadi Vs Pest Control (India) Pvt. Ltd. and others – (1995) 1 SCC 551***, it has been held that, *pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant:*

*(i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.”*

20. The appellant/ Insurance Company submitted that, the Claimant failed to examine the Medical Officer to prove disability certificate. However, the appellant did not bring any material in cross

examination to disbelieve the Disability Certificate Exh.24. The appellant/Insurance Company submitted that, there was contributory negligence on the part of respondent No.2 and the motorcycle rider, but the appellant/insurance company failed to lead evidence to prove contributory negligence on the part of the motorcycle rider and the driver of Auto-rickshaw. Therefore, findings recorded by the learned Tribunal do appear to be perverse, illegal or bad in law. No substantial grounds are set out to interfere with the findings recorded by the learned Tribunal.

21. In view of the above discussion, the present appeal fails and it is hereby dismissed. No order as to costs.

**[ Y. G. KHOBRADE, J. ]**

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