



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1184 OF 2012
WITH
CA/8271/2019

Gokuldas s/o Tulshiram Panchal
Age; 42 years, Occu; Business,
R/o; Biloli. At present resident of
Mahaveernagar, Nanded,
Tq. and Dist. Nanded.

...APPELLANT
(Orig. Claimant)

VERSUS

1. P. Raju s/o Anjaiah
Age; Major, Occ; Business,
R/o; Vani Nagar, Mandal Jagtial,
Dist. Karimnagar (A.P.)
2. National Insurance Co. Ltd.
Through it's Divisional Manager,
Divisional Office,
Near Municipal Office,
Darimnagar (A.P.)
3. National Insurance Co. Ltd.,
through it's Divisional Manager,
Divisional Office,
Nanded, Dist. Nanded.

...RESPONDENTS
(Orig. Respds.)

...
Advocate for Petitioner : Mr. Krishna P. Rodge h/f Mr. P.C. Rodge
Respondent Nos. 1 & 2 are served
Advocate for Respondent No. 3 : Mr. S.R. Bodade
...

CORAM : KISHORE C. SANT, J.

Date of Reservation : 16.10.2023
Date of Pronouncement : 06.12.2023

JUDGMENT :

1. Heard the parties. Taken up for final disposal at the stage of admission.
2. This appeal is by the Original Claimant for enhancement in compensation granted by the learned Member, MACT, Nanded in MACP No. 668 of 2004 dated 28.02.2012. The learned Member has partly allowed the petition directing respondent Nos. 1 to 3 to pay jointly and severally Rs. 5,03,206/- compensation to the appellant with interest @ 6.5% p.a. from the date of filing of the Original Petition.
3. The respondents are the original respondents in the claim petition. This Court had called for the record and proceedings and the same is perused.
4. The facts in short are that the Claimant is a businessman. On 03.11.2003 while he was proceeding on Hero Honda Motorcycle to Naigaon, he met with an accident with one truck bearing No. AP-25/T-3747, which came from back side in high speed. The driver was driving vehicle in rash and negligent manner. In the said accident the claimant received injuries as the motorcycle came under the truck and burnt due to dash.

Appellant received injuries to his right thigh, right leg, chest and also caused right femur fracture injury as well as right tibia fibula fracture injury and fracture injury to T// vertebra. The claimant was required to spend 80,000/- on medical bills, 20,000/- on diat. He sustained loss to the motorcycle to the tune of Rs. 35,000/-. The petitioner became permanently disabled and suffered economic loss to the extent of Rs. 10,000/- p.m. It is the case of the claimant that he was business man and earning Rs. 10,000/- p.m.

5. The appellant in support of his claim relied upon the documents like FIR, spot panchanama, MLC report and medical documents as well as documents in respect of insurance policy. The defence of the insurance company is mainly that there was no rash and negligent act of the part of truck driver alleging that the claimant himself was driving motorcycle in rash and negligent manner. It was further defence that it is a case of contributory negligence. There is no proof of injuries and disability.

6. The learned Member considered evidence and accepted the case of the appellant about the income. The learned Member observed that the claimant has not established

his income. He could not show the income tax details and professional tax details. Though his case was that he runs a medical store, however, no shop Act license etc. is produced on record. The certificate showing that the claimant runs farmacy business and it cannot be taken as proof of income. The learned Member has notionally taken the income to be of Rs. 4,500/- p.m.. The learned Member considered disability to the extent of 45% and yearly loss of Rs. 24,300/-. Looking to the age of the injured/claimant the multiplier of '15' was made applicable. Towards medical bills etc. total amount is taken to be Rs. 1,38,706/- as proved and passed an award.

7. The learned Advocate Mr. Rodge, for the Claimant submitted that the disability was to the extent of 70%. The learned Member has wrongly taken the same to be only 45%. His income ought to have been considered as 10,000/- p.m. He has produced on record the proof to show that he runs medical shop. No future prospects were considered. The bills ought to have been considered and to be accepted as it is. The learned Member has wrongly deducted 20% of amount from the bills. He then submitted that the learned Member ought to have allowed the claim as it.

8. Mr. Bodade, the learned Advocate for the respondents vehemently opposed the petition stating that the learned Member has rightly passed an award. The claimant has not produced any proof of income, therefore he is not entitled to any enhancement. There is no sufficient proof about the income & disability affecting the earning capacity of the claimant. A private Doctor who treated the claimant in the hospital, has not been examined. The disability certificate cannot be said to be the proof without examination of the Doctor. The driving license is not produced on record. He submits that no pay and recovery order also can be made in such case. No account extract is produced on record. If the claimant has a business, he ought to have produced on record the extracts of profit and loss account. He prayed for dismissal of the appeal.

9. Mr. Rodge, the learned Advocate in rebuttal submits that the insurance company has taken the grounds which are not sought to be canvassed before this Court were not set out in defence before the reference Court. This Court finds that the fact of accident is not at all disputed. The question would be only about to the extent of disability and the notional income of the claimant. In support of his case the Claimant has examined himself. He deposed that he happened to be a businessman and

running a business. Because of the injuries, he was required to close down his shop. There is loss of future income. He produced medical papers on record. The copies of police papers. M.L.C., discharge card and medical bills and surgical bills.

10. From the cross-examination, it is seen that the respondent has not taken anything to shatter the evidence of the appellant in the chief-examination. Only suggestions were given that the certificates and the bills are false and are not correct. There is OPD form of the Government Hospital. There is no Outward number on the certificate. He could not state the name of the medical officer. It is also taken in the cross-examination that the claimant has not produced any material on record to show his income.

11. From the evidence and the cross-examination, it is seen that though it is claimed by the claimant that his income was Rs.10,000/- p.m., the fact remains that there is nothing on record to show the proof of income. He has not produced any document as such the extract of profit and loss account, from which he maintained his shop etc. About notional disability, this Court finds that there is no sufficient evidence on record to

show the extent of disability. It was necessary to examine the Medical Officer to prove the extent of disability.

12. Coming to the submission of learned Advocate for Respondent No. 3 Mr. Bodade. He rightly placed reliance on the judgment reported in **2008 STPL 12995** in the case of Rajesh Kumar @ Raju Vs. Yudhvir Singh and Anr. He submitted that it was necessary for the claimant to examine an expert to prove extent of disability and the injuries caused. So far as the income is concerned, in absence of any evidence the learned Member has notionally taken the income to be of Rs. 4500/-.

13. Further reliance of Mr. Bodade is on the judgment in the case of **2018 (4) ALL M.R. 494 (SC) ICICI Lombard General Insurance Company Ltd., v Ajay Kumar Mohanty & Anr.** is rightly applicable. The Hon'ble Apex Court in the aforesaid case held that the income was considered solely on the basis of oral testimony of the claimant, the same is therefore not accepted by the Hon'ble Apex Court. So far as the judgment relied upon by the learned Advocate Mr. Rodge is concerned in **2020 SCC Online SC 752** in the case of Pappu Deo Yadav Vs. Naresh Kumar and Others, this Court finds that in that case there was evidence on record about the income. His further reliance is on

the judgment reported in **2022 SCC Online 1701** in the case of Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation. There is no doubt about the proportion and the ratio, however, in the present case in absence of sufficient evidence the arguments of Mr. Rodge cannot be accepted.

14. After considering all the judgments only factor to the extent can be considered is about the future prospectus. This Court finds that on the date of accident the age of the claimant was 42 years and 30% addition ought to have been added towards future prospectus. The Member Court has taken yearly loss of Rs. 24,300/-, if 30% is added, the same would come to Rs. 31,590/ x 15 which comes to Rs. 4,73,895/-. The amount of compensation ought to have been Rs. 4,73,895/- instead of Rs. 3,64,500/-. The difference comes to Rs. 1,09,395/-. Thus, the award needs to be modified only to that extent. In view of the same, First Appeal is partly allowed. Hence following order :

ORDER

a) The Claimant shall be entitled to receive Rs. 1,09,395/- (Rs. One Lakh, Nine Thousand Three Hundred and Ninety Five) in addition to compensation already granted by the learned Member, MACT, Nanded.

- b) The respondent shall pay said amount along with interest @ 6.5% p.a. from the date of filing of the Claim Petition.
- c) In view of disposal of main appeal, civil applications if any, are disposed off.
- d) Award be drawn up accordingly.

(KISHORE C. SANT)
JUDGE

mahajansb/