

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1625 OF 2004

Baba Jahursaheb Shaikh
Age : 23 years, occ : business
R/o Snehnaz Colony, in front
of Kumaraswami College, Near
Water Tank, Ausa, Dist. Latur.

Appellant

Versus

1. Maharashtra State Road Transport Corporation, Through Divisional Controller, Latur.
2. Vijaykumar Sharanappa Mohalkar
Age : major, occ : S.T. driver
R/o Dabka Ves, Gandhi Nagar,
Nilanga.

Respondents

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Mr. R.R Deshmukh, Advocate holding for Mr. R.B. Deshmukh,
Advocate for the appellant.
Mrs. Ranjana Reddy, Advocate for respondent MSRTC.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 27.02.2023
Judgment pronounced on : 28.02.2023

Judgment :

1. The appellant i.e. the original claimant, has preferred this appeal against the judgment and award dated 08.09.2004 passed by Ex-Officio Member of Motor Accident Claims Tribunal, Latur ((hereinafter referred to as “the learned Tribunal), in Motor Accident Claim Petition No.

506/2000, for enhancement of compensation amount. The learned Tribunal has granted compensation of Rs. 34,250/- (inclusive of the compensation under Section 140 of the Motor Vehicles Act based on the principle of “no fault liability”) alongwith interest at the rate of Rs. 9 % per annum from the date of petition till it's realization, jointly and severally from the respondents.

2. Heard rival submissions. Also perused the impugned judgment alongwith the record and proceeding in M.A.C.P. No. 506/2000.

3. Learned Counsel for the appellant vehemently argued that the learned Tribunal did not properly appreciate the evidence on record and only granted meager amount of compensation ignoring the percentage of permanent disability suffered by the appellant – claimant. He also contended that the learned Tribunal wrongly held the notional income of appellant as Rs. 2,000/- per month instead of Rs. 3,000/- per month.

4. On the contrary, learned Counsel for the respondent M.S.R.T.C. strongly opposed the submissions and supported the impugned judgment.

5. It is significant to note that the learned Tribunal, while granting the compensation, has awarded an amount of Rs. 8,243/-, rounded as Rs. 8,250/- for medical treatment + Rs. 2000/- as ancillary expenses. The Tribunal further awarded Rs. 5,000/- for the nature of injury sustained by the claimant and Rs. 5,000/- for pains and sufferings. The learned Tribunal has further granted an amount of Rs. 4,000/- as a loss of income and thereafter awarded Rs. 10,000/- on account of compensation for disability. However, in the case of *Raj Kumar vs Ajay Kumar and another* reported in *(2011) 1 SCC 343*, the Hon'ble Apex Court has laid down specific method of calculation in personal injury claims to determine the amount of compensation. Though this judgment was not in existence when the impugned judgment was passed, but since the subsequent judgments of the Hon'ble Apex Court are also applicable for the pending cases and even in the pending appeals, the calculation as per those judgments is to be made for deciding just compensation.

6. So far as the amounts granted under the heads of medical and ancillary expenses, pain and sufferings, are concerned, the same appear to be awarded in consonance

with the evidence on record. As such, the dispute appears to be raised only in respect of compensation awarded under the heads of nature of injury, loss of income and compensation under disability. It is significant to note that nothing has been awarded under future loss of income, despite there being medical evidence. Therefore, one has to determine the amount of just compensation in the light of the observations of Hon'ble Apex Court in the case of ***Raj Kumar vs Ajay Kumar*** (supra)

7. It is significant to note that the appellant has examined Dr. Jadhav at Exh. 44, who has proved the contents of permanent disability certificate at Exh.27. Admittedly, in the said certificate it is mentioned that the appellant suffered from permanent disability to the extent of 17%. However, Dr. Jadhav, who has issued this certificate, has not stated anything as to whether the said percentage of disability was to the extent of whole body or restricted only to that part of body. Further, there is nothing mentioned about functional disability. While determining the correct compensation in respect of future loss of income, functional disability of the appellant needs to be taken into consideration. It appears from the evidence of Dr. Jadhav

that the injury of the appellant was healed completely at the time of examination while issuing permanent disability certificate. Moreover, the appellant had suffered from fracture of right tibia fibula, and therefore, considering complete healing of the fracture injury, it can safely be inferred that the appellant must have suffered from functional disability to the extent of 5% only, especially considering the fact that he was assisting his father in hotel business.

8. Further, the learned Tribunal appears to have determined monthly income of the appellant to the tune of Rs. 2,000/- being an assistant of his father in hotel business. However, considering the date of accident, the learned Tribunal should have taken his notional income as Rs. 3,000/- per month. Therefore, considering the percentage of functional disability, as determined above, the future loss of income of the appellant comes to Rs. 150/- per month. Further, his age appears to be 23 years at the time of accident. Therefore, multiplier of "18" is applicable, as observed by the Hon'ble Apex Court in the case of Smt. Sarla Verma vs Delhi Transport Corporation, 2009 (6) SCC 121. Thus, on application of this multiplier to the annual loss of income of the appellant, his future loss of income would come

to Rs. 32,400/- (150 x 12 x 18). Moreover, his actual loss of income would also come to Rs. 6,000/- considering the fact that he was out of work for about two months. As such, I determine the amount of just compensation for which the appellant is entitled, as follows :

a)	Medical expenses and ancillary charges	:-	Rs. 10,250/-
b)	Pain and suffering	:-	Rs. 5,000/-
c)	Loss of actual income	:-	Rs. 6,000/-
d)	Loss of future income	:-	Rs. 32,400/-

Total		:-	Rs. 53,650/-

9. As such, the appellant is now entitled for compensation of Rs. 53,650/- (Rupees Fifty Three Thousand Six Hundred and Fifty only), inclusive of the "NFL" amount under Section 140 of Motor Vehicles Act. The respondents have satisfied the award of the learned Tribunal, and therefore, the same has to be deducted from the aforesaid compensation. On such deduction, the appellant is now entitled for enhanced compensation of Rs. 19,400/- (Rupees Nineteen Thousand Four Hundred only). Further, since the appeal is decided in the year 2023, the prevailing rate of interest i.e. 6% per annum will be applicable on the aforesaid enhanced amount of compensation from the date of petition till it's realization.

10. In the result, following order is passed.

ORDER

- (i) The appeal is hereby partly allowed.
- (ii) The respondents shall jointly and severally pay an enhanced amount of Rs. 19,400/- to the appellant alongwith interest at the rate of Rs. 6% per annum from the date of petition till it's realization, within three months from the date of this order.
- (iii) The amount shall be deposited in this Court and on deposit of such amount, the appellant is at liberty to withdraw the same.
- (iv) The award be modified accordingly.
- (v) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)