



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 06 OF 2017

United India Insurance Co. Ltd. Appellant
v/s.
Mr. Sameer Shridhar Nar and anr. Respondents

**WITH
INTERIM APPLICATION NO.14773 OF 2023
IN
FIRST APPEAL NO. 06 OF 2017**

Mr. Sameer Shridhar Nar
through his wife :
Mrs. Sarika Sameer Nar Applicant

In the matter between :-
United India Insurance Co. Ltd. Appellant
v/s.
Mr. Sameer Shridhar Nar and anr. Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant.
Mr. Ketan Pote a/w. Mr. Deepak Pote i/b. Mr. A.P. Avhad
for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 31st AUGUST, 2023.

P. C. :-

. Not on board. With consent, taken on board and heard finally.

2. The Appellant – Insurance Company has by this appeal under section 173 of the Motor Vehicles Act challenged the judgment and award dated 18/06/2016 passed by the Member, Motor Accident

Claims Tribunal, Mumbai in Claim Application No.193 of 2011. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs.43,47,000/- with interest @ 9% p.a. from the date of filing of the application till realization of the amount.

3. The brief facts necessary to decide this appeal is as under :-

On 22/07/2009, while the Respondent No.1 - Mr. Sameer Shridhar Nar hereinafter referred to as 'the Claimant', was proceeding by his tempo bearing No.MH-04-DD-9451 to collect newspapers, a Pajero car bearing No.MH-12-EX-4477 came at excessive speed and dashed against the tempo. As a result, the tempo was dragged to some distance and turned turtle. The Claimant sustained severe head injury and was admitted in Bhatia Hospital as an indoor patient from 22/07/2009 to 16/09/2009. He was thereafter shifted to Masina hospital and was an indoor patient from 16/09/2009 to 09/10/2009. The Claimant had suffered brain injury resulting in permanent disablement of 65%. He was unfit to do the work which he was capable of performing at the time of the accident.

4. The Claimant was working with AW4- Mr. Laxman Hadawale and was earning salary of Rs.8,000/- per month. The Claimant is unable to

walk and earn his livelihood and has lost simple pleasures of life. Hence, the Claimant filed a Petition under section 166 of the Motor Vehicles Act claiming compensation of Rs. 01 Crore.

5. The Respondent No.2 – insured did not contest the claim while the Appellant – Insurance Company contested the application and disputed the age and income of the Claimant. The Appellant – Insurance Company also denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle.

6. The Tribunal, after considered the evidence on record adduced by the Claimant, awarded compensation as under :-

- (i) Rs.7,60,000/- towards medical expenses,
- (ii) Rs.20,000/- towards special diet and conveyance,
- (iii) Rs.2,00,000/- towards pain and suffering,
- (iv) Rs.1,00,000/- towards loss of amenities of life,
- (v) Rs.3,00,000/- towards loss of marital and conjugal rights,
- (vi) Rs.15,91,200/- towards loss of future income due to disability,
- (vii) Rs.4,75,650/- towards attendant charges,
- (viii) Rs.5,00,000/- towards future attendant charges and ;
- (ix) Rs.4,00,000/- towards future medical expenses.

The Tribunal thus awarded total compensation of Rs.43,47,000/-. Being aggrieved by the quantum of compensation, the Appellant – Insurance Company has filed this appeal.

7. Heard Mr. Mehta, learned counsel for the Appellant – Insurance Company and Mr. Pote, learned counsel for the Respondent – Claimant. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable.

9. As regards the quantum of compensation, the law relating to grant of compensation in injury cases is well-settled. In ***Raj Kumar v/s. Ajay Kumar (2011) 1 SCC 343***, the Hon'ble Supreme Court has laid down the general principles relating to compensation in injury cases and has held thus :-

“4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to

the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award

under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability. ”

10. In ***Pappu Dev Yadav v/s. Naresh Kumar AIR 2020 SC 4424***, the two questions for consideration before three Judge Bench of the Hon'ble Supreme Court were : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. While answering both these questions in the affirmative, the Hon'ble Supreme Court after referring to and considering the previous decisions reiterated that 'just compensation' should include all elements that would go to place the victim in as near a position as he or she was in, before the occurrence of the accident. While no amount of money or other material compensation can erase the trauma, pain and suffering that the victim undergoes after a serious accident, monetary compensation in the manner known to law whereby society assures some measures of restitution to those who survive, and the victims who have to face their lives. The Apex Court has emphasized that the Court should not adopt

a stereotypical or myopic approach, but instead view the matter taking into account the realities of life, both in the assessment of the disabilities and compensation under various heads. It is observed that Court should be mindful that a serious injury not only imposes physical limitations and disabilities but too often 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 is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in Judge's mind whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts of oblivious of these circumstances, there is resultant affront of the injured victim.

11. The records reveal that the Claimant had sustained large lacerated wound over the left frontal region with underlying

comminuted fracture of the bone. He was operated and was in critical condition and was on ventilatory support and medication for a long time. Even after his discharge, he had to undergo regular physiotherapy and rehabilitation programme. He has weakness in the right side of the body, speech impairment, mood swings, difficulty in walking and in holding things by his right hand. He is unable to concentrate and has an issue of hypertension. He needs constant assistance for his day to day activities. Though the permanent disablement is of 65%, the Claimant is in fact unable to earn his livelihood which renders functional disability of 100%. Furthermore, as on the date of the accident, the Claimant and his wife were a young couple of 28 and 21 years respectively. The disablement suffered by the claimant shall affect his marital life leading to frustration, disappointment and mental agony. In short, the injuries have impacted physical, mental and psychological health and financial well being of the Claimant.

12. Now coming to the quantum of compensation, the evidence on record reveals that during his stay in the hospital, the Claimant had incurred medical expenses of Rs.7,60,000/-. The Claimant has examined AW5 – Anand Raghunath Kamble, who was engaged as an

attendant. AW5 was initially paid Rs.350/- per day which was enhanced to Rs.400/- per day. The Claimant had thus paid to him total amount of Rs.4,75,000/- towards attendant charges. Considering the nature of the injuries as well as the nature of the permanent disability, it is evident that the Claimant will require continuous medical treatment and will also need an attendant to assist him in day to day activities. In such circumstances, compensation of Rs.9,00,000/- towards future medical expenses and attendant charges cannot be considered to be exorbitant.

13. The Claimant was a young man of 28 years of age and was earning Rs.8,000/- per month. The Tribunal added 50% towards future prospects and assessed the monthly income of the Claimant as Rs.12,000/- per month. Since the functional disability is of 100%, future loss of income is computed at Rs.15,91,200/-. Considering the nature of the injuries and the treatment undergone, the Tribunal has awarded Rs.6,00,000/- towards pain and suffering, loss of amenities of life including loss of marital and conjugal rights, which is just and proper.

14. Having gone through the entire records, the compensation

awarded by the Tribunal is not exorbitant. I do not find any reasons to interfere with the said order. Hence, the Appeal is dismissed. The compensation deposited by the Appellant – Insurance Company be paid to the Claimant along with interest accrued thereon. Statutory deposit be transferred to the Claims Tribunal, Mumbai. Interim Application stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)