

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.453 OF 2017

Yusuf Khan s/o Karamat Khan,
Aged 42 Years, Occu. : Mason,
R/o Zulfukar Nagar, Khair Mohammed,
Plot, Old City, Akola,
Taluka and District Akola.

APPELLANT

// VERSUS //

1. United India Insurance Co. Ltd.,
Through it's Divisional Manager,
Rajasthan Bhavan, 1st Floor,
Old Cotton Market, Akola,
Taluka and District Akola.
2. Sangita Sanjay Agrawal,
R/o. Umargaon, Tahsil – Kalamb,
District – Yavatmal.
3. Amir Khan s/o Munir Khan,
Aged about – 40 Years,
Occu.: Driver, R/o Peer Baba Dargah
Moholla, Khadakpura, Murtizapur,
Taluka – Murtizapur, District – Akola.

RESPONDENTS

Ms. Aastha Sharma, Advocate h/f Mr. P. R. Agrawal, Advocate for
appellant.

Mrs. Anita Mategaonkar, Advocate for respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON 13/02/2023
PRONOUNCED ON 07/06/2023

JUDGMENT

1. The present appeal has been filed by the original claimant seeking enhancement of compensation which was granted by the learned Motor Accident Claims Tribunal, Akola by Judgment and Award dated 21.11.2016.

2. The brief facts which are necessary for disposal of the appeal are as under:

On 04.02.2014 at about 4.30 p.m., when claimant was proceeding towards Washimba to Akola – Murtizapur road on his Pulsar motorcycle bearing registration No. MH-30/V-924. He was proceeding on his motorcycle by observing the traffic rules and regulations and reached ahead of village Babhulgaon, at the relevant time, offending truck bearing registration No. MH-29/8777 came from back side and dashed against his motorcycle. Due to the said dash, he fell down on the road and front wheel of offending truck crossed over his left leg. Due to the sudden dash, he sustained grievous injuries like fracture to his shaft of left femur, middle 1/3, Osteochondral fracture of anteromedial femoral condyle, left knee etc. After the accident, he was immediately shifted to Gadhiya Hospital, Akola wherein he was treated as indoor patient from 04.02.2014 to 11.02.2014. As per the contention of the claimant, due to the said injuries, he is permanently disabled to the extent of 40%. Regarding the said accident, crime was registered against the truck driver vide Crime No.52/2014. At the relevant time, he was working as Mason and earning Rs.15,000/- per month. At the time of accident, he was aged about 40 years. Due to the accidental injuries, he became permanently disabled and now his working capacity is affected therefore, he is claiming the compensation under the head of

pecuniary and non-pecuniary damages. The respondent No.2 is the owner of the truck and offending truck was validly insured with the respondent No.1 therefore, both the respondents are jointly and severally liable to pay the compensation.

3. The claim was resisted by respondent No.1 and denied the allegations. The respondent Nos.2 and 3 have filed their written statement and denied the contentions. The contentions of respondent Nos.1 to 3 is that the appellant is also responsible for the said accident and contributory negligence is attributed to him.

4. To substantiate the contention, the claimant adduced his evidence vide Exh.27. He narrated regarding the alleged accident. Besides his oral evidence, he placed reliance on FIR Exh.29, Spot panchnama Exh.30, Medical Certificate Exh.31, Discharge Summary Exh.32, MRI and CT Scan report Exhs.33 and 34, Disability Certificate Exh.42. To prove the disability certificate, he examined PW-2 Dr. Amit Bansilal Jadhav. The respondents have not adduced any evidence. The Tribunal on the basis of evidence held that appellant is entitled to receive the compensation by considering his income Rs.4500/- per month and awarded the compensation of Rs.4,24,710/-.

5. Being aggrieved and dissatisfied with the compensation awarded present appeal is preferred for the enhancement of the compensation on the ground that the appellant who was a self employed person working as a skilled labour and therefore, his income is to be considered as Rs.15,000/- per month.

6. Since the appellant had not placed on record any documentary evidence as regards the actual income the Tribunal took into consideration his income as a Rs.4500/- per month and on that basis calculated the loss of income. The Tribunal also granted amount towards medical expenses and pain and sufferings along with interest at the rate of 7% per annum.

7. The learned Advocate Ms. Aastha Sharma, for the appellant submitted that the quantum of compensation granted by the Tribunal was inadequate and the claimant is entitled for enhancement. In the light of the Judgments of the Hon'ble Apex Court clarifying the Judgments as regards calculation of compensation payable in case where the victim is injured person. It is submitted that the income of the appellant ought to have taken into consideration as Rs.15,000/- per month as he was a skilled labour. It is further submitted that the compensation was not awarded by taking into consideration future

prospects and therefore, same is also required to be taken into consideration. In this regard, she placed reliance on the Constitution Bench Judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (2017) 16 SCC 680. She further placed reliance on **Jagdish Vs. Mohan and Ors.** reported in 2018 AIR SC 1347, **Smt. Neeta w/o Kallappa Kadolkar and others Vs. The Divisional Manager, MSRTC, Kolhapur** reported in 2015 ACJ 598, **Mohan Soni Vs. Ram Avtar Tomar and others** reported in 2012 ACJ 583, **Pappu Deo Yadav Vs. Naresh Kumar and Ors.** reported in 2020 AIR SC 4424 and **Erudhaya Priya Vs. State Express Transport Corporation Ltd.,** reported in 2020 AIR SC 4284.

8. On the other hand, the learned Advocate Mrs. Anita Mategaonkar for the respondent No.1 submitted that quantum of compensation granted by the Tribunal was reasonable and that no interference was warranted in the facts and circumstances of the present case.

9. As regards the monthly income of the claimant is concerned, the Tribunal had taken into consideration Rs.4500/- per month. Admittedly, the appellant had not placed on record any documentary evidence to show that he was working as a Mason and was a skilled

labour. The Tribunal had taken into consideration that even if it is considered that claimant was working as a labour, he would get the income by working as a labour at the rate of Rs.4500/- per month. Although, the appellant failed to place on record documentary material to show that he was skilled labour and working as a Mason, the Tribunal had rightly taken into consideration the income of the claimant, in view of the Minimum Wages Act. Though learned Counsel placed reliance on the Judgment of **Smt. Neeta w/o Kallappa Kadolkar** (supra) wherein death of the skilled worker was considered by the Hon'ble Apex Court. In fact, in the present case, evidence as to the fact that he was working as a skilled worker as a Mason was not adduced. Thus, the Tribunal, had taken into consideration the income of the claimant in view of Minimum Wages Act and there is no reason to interfere with the said observations.

10. As far as the contention of the claimant is concerned that the compensation is not awarded by taking into consideration the future prospects. The medical evidence adduced by the claimant by examining PW-2 Dr. Amit Bansilal Jadhav shows that claimant has sustained the injuries like fracture of shaft femur right side with injury to patella with soft tissue injury to distal thigh. The Medical Officer has evaluated the said disability to the extent of 40%. He further testified that it was a

permanent disability. Though this medical witness is cross-examined the percentage of the disability was not challenged during the cross-examination. The medical certificate shows that claimant has sustained fracture of shaft femur left side, osteochondral fracture, fibular neck fracture, horizontal laceration 6 cm at the level of knee joint. The evidence shows that he was under the treatment from 04.02.2014 to 11.02.2014. The Medical Officer stated that the injuries sustained by the claimant resulted into permanent disability. If a claim for compensation is made by an injured, alleging disability and quantum of loss of future is claimed, the compensation shall be payable to the victim under the head of loss of income for actual period of disablement. In case of permanent total disablement, the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation.

11. It is observed by the Hon'ble Apex Court in the case of **Raj Kumar Vs Ajay Kumar and Ors.** reported in **2011 ACJ 1** that if Tribunal proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates

are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board and refer the claimant to such Medical Board for assessment of the disability.

12. The Hon'ble Apex Court further issued the guidelines for the assessment of loss of future earnings by giving illustrations. The illustration 'A' given is if the injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. The illustration 'B' is in

respect of the injured who was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%.

13. In the light of the above guidelines, if in the present case, the evidence is assessed admittedly the claimant was working as a labour. He has sustained the injuries on his leg. As per the Medical Officer it is permanent disability. Thus, the loss of future earning capacity was 40%. The Tribunal overlooked the fact that the disability certificate refer to 40% disability with reference to his lower limb. The disability certificate was issued by apportioning the percentage against the disability in walking, standing, squatting etc. Thus, in the present case, an injured claimant is having disability which can be calculated by considering his future loss of earning which he is entitled to receive.

14. In the above guidelines by considering the income of the claimant as Rs.4500/- per month. His yearly income comes to Rs.54000/- per year. After adding 40% future prospects it comes to Rs.75,600/-. Considering 40% disability the amount comes to

Rs.30,240/-. The age of the deceased was 40 years so multiplier of 15 is to be applied. After applying the multiplier of 15 the loss of income comes to Rs.4,53,600/-. As claimant has sustained the grievous injuries as mentioned above there was total loss of income for six months which comes to 27,000/-. In addition to that, the claimant is entitled to receive the compensation under the head of special diet of Rs.10,000/-, towards the expenses of attendant Rs.15,000/- and towards the conveyance Rs.10,000/-. The claimant has further proved the bills of Rs.41,705/-.

The claimant is entitled to receive total compensation as follows:

Yearly income of the claimant is

Rs.54,000/-.

Future prospects 40% comes to

Rs.21,600/-.

After adding future prospects yearly	:	Rs. 75,600/-
income comes to (Rs.54,000 + Rs.21,600)		

40% disability - amount comes to

Rs.30,240/-.

After applying multiplier of 15 amount	:	Rs.4,53,600/-
comes to (Rs.30,240 X 15)		

Loss of income for six months	:	Rs. 27,000/-
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Medical Bills	:	Rs. 41,705/-
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Special diet	:	Rs. 10,000/-
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Attendant	:	Rs. 15,000/-
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Conveyance	:	<u>Rs. 10,000/-</u>
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Total compensation claimant is entitled to receive.	:	<u>Rs.6,32,905/-</u>
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15. In view of the above, the appeal is partly allowed.
16. The claimant is entitled to receive enhanced compensation of Rs.6,32,905/-.
17. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.6,32,905/- along with interest at the rate of 7.5% per annum.
18. The respondents to pay compensation after deducting the compensation amount which is already paid within ten weeks from the receipt of the copy of the Judgment in the above terms.
19. Appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate.