

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.1574 OF 2008

Abdul Salim s/o Abdul Sattar,
Aged about 43 years, Occupation – Nil,
R/o Buddhuka Minar, Jalalpura,
Gandhibagh, Nagpur

...APPELLANT

VERSUS

1. Rana s/o Tilakraj Khurana,
Aged Major, Occupation – Business,
R/o Care of Khurana Travels,
Near Aggyarmdevi Temple,
Gandhibagh, Nagpur
2. The Manager, The National Insurance
Company Ltd.,
MIDC Branch, Laxmi Nagar,
Nagpur - 22

...RESPONDENTS

Shri S.S. Alaspurkar, Advocate for the appellant.
Shri S.D. Zoting, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 24, 2023.
PRONOUNCED ON : JUNE 05, 2023

JUDGMENT :

Heard learned Counsel for the parties.

2. By this appeal, the appellant has challenged the judgment

and award passed dated 18/04/2007 passed in Claim Petition No.630/2003 by Motor Accident Claims Tribunal, Nagpur awarding compensation of Rs.5,81,000/-. The appeal is for enhancement of compensation.

3. Brief facts which are necessary for the disposal of the appeal are as under :

A] The appellant on 11/10/2002 was travelling in travel bus bearing No.MH-31-W-6700 from Hyderabad to Nagpur. Said bus was driven by its driver in an excessive speed in a rash and negligent manner. When the said bus reached at Mouza Ghat Sawali NH No.7, at the relevant time bus driver has lost his control and bus turtle down. In the alleged accident, the appellant received several injuries all over the body. After the accident he was immediately removed to Indira Gandhi Medical College and Hospital, Nagpur for treatment. Regarding the said accident, the crime was registered against bus driver vide Crime No.78/2002.

4. As per the contention of the claimant that in the alleged accident he sustained extensive degloving injury on right thigh with traumatic amputation left with fracture right fibula under third closed. He has undergone the skin grafting on 29/11/2002. Said injuries

sustained by the claimant resulted into 75% permanent disability. As per contention of the claimants at the time of alleged accident, he was doing the business as a cloth merchant and used to sell the cloths in village and was earning Rs.9000/- per month. Due to the permanent disability as his left hand was amputated below elbow, his working capacity is affected as well as his occupation is also affected. For all above these grounds he claimed the compensation under the pecuniary and non-pecuniary heads.

5. The claim of the claimant was resisted by respondent No.2 – Insurance company on the ground that the claimant is not entitled for any compensation as the accident has not occurred due to rash and negligent driving of bus driver. The respondent No.1 failed to appear and not resisted the claim.

6. To substantiate the contention, the claimant has adduced his evidence vide (Exhibit 21) and also placed reliance on First Information Report (Exhibit 22), Spot panchnama (Exhibit 23), Accident form (Exhibit 24), Discharge Card (Exhibit 25), Disability Certificate (Exhibit 26), Income Tax acknowledgment (Exhibits 27 and 28) and Medicine Bills (Exhibit 29). After appreciating evidence, the Tribunal had considered the notional income of the injured and awarded the

compensation of Rs.5,81,000/- along with interest @7.5% per annum from the date of petition till its realisation.

7. Being aggrieved and dissatisfied with the judgment and award, present appeal is preferred for enhancement on the ground that the learned Tribunal has awarded the compensation inadequately without considering the income of the injured. It is the contention of the appellant that though physical disability is ascertained at 75% however, entire occupation of the claimant is affected, therefore, it is to be considered as 100%. In view of that the claimant is entitled to receive the compensation at the enhanced rate.

8. Heard Shri S.S. Alaspurkar, learned Counsel for the appellant. He submitted that the claimant was a businessman and was selling the cloths by moving from one village to another village in a weekly market of the concerned village. As the left hand of the claimant was amputated now he is unable to carry his stock to sell it in the market place. Thus, the disability of the injured is 100%, and therefore, he is entitled for compensation by considering his disability 100%.

9. In support of his contention he placed reliance on *National Insurance Co. Ltd. Vs. Pranay Sethi and ors. (2017) 16 SCC 680*,

Hem Raj Vs. Oriental Insurance Co. Ltd. and ors. (2018) 15 SCC 654, Sarla Verma (Smt) and ors. Vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121, Raj Kumar Vs. Ajay Kumar and anr. (2011) 1 SCC 343, K. Suresh Vs. New India Assurance Co. Ltd. and anr. (2012) 12 SCC 274, Minu Rout and anr. Vs. Satya Pradyumna Mohapatra and ors. AIR 2013 SC (Supp) 62, Munna Lal Jain and anr. Vs. Vipin Kumar Sharma and ors. 2015 AIR SCW 3105, Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Co. AIR 2014 SC 1052 and Shivakumar M. Vs. Managing Director, Bengaluru Metropolitan Transport Corporation (2017) 5 SCC 79 and Sanjay Kumar Vs. Ashok Kumar and anr. AIR 2014 SC (Supp) 1584.

10. *Per contra*, Shri Zoting, learned Counsel for the respondent No.2 supported the judgment of the Tribunal and submitted that the Tribunal has awarded the compensation by appreciating the evidence. Hence, the appeal has no merits and liable to be dismissed.

11. A man is not compensated for physical injury, he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff body parts, but it is his inability to live a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could

have earned. In calculating the compensation, it is the object of the tribunal to award an amount which will put the injured person in the same position had he not sustained the injuries. Though it is true that money cannot renew the physical frame which has been damaged, the tribunals are supposed to endeavour in awarding sums which can be said to be a just and reasonable compensation. The Constitution Bench of the Hon'ble Apex Court in Pranay Sethi (supra) also dealt with the just compensation. The Hon'ble Apex Court held that Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The conception of just compensation has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability.

12. In the light of the above principles, the claim of the appellant for the compensation is to be appreciated and ascertained. Admittedly, the Insurance Company has not challenged the judgment and award. Therefore, only issue involved in the appeal is whether the appellant is entitled for enhanced amount of compensation. The evidence of the appellant shows that on 11/10/2002, when he was travelling in a

offending bus owned by respondent No.1 and validly insured with respondent No.2 met with an accident as the bus driver could not control his vehicle and turtle down. There is no dispute that regarding the said accident, the crime was registered against the bus driver. The FIR (Exhibit 22), spot panchnama (Exhibit 23) supports the contention of the claimants. The claimant was admitted in the hospital i.e. Indira Gandhi Medical College and General Hospital, Nagpur as he sustained extensive degloving injury on right thigh with traumatic amputation left with fracture right fibula under third closed. The Discharge Card is at Exhibit 25. The Disability Certificate Exhibit 26 issued by the medical board shows that the injuries sustained by the appellant resulted into below elbow amputation with raw area right thigh with knee and assessed 75% disability. The evidence of the claimant shows that at the time of accident, he was doing the business as a cloth merchant and was moving from place to place and selling the cloths in a weekly market. He was earning Rs.9000/- per month. Due to the accidental injuries now his avocation and profession is affected 100% and he is unable to work. Therefore, he is entitled to receive the compensation by holding 100% disability.

13. The Tribunal has awarded Rs.28,800/- towards the medical expenses. The original medical bills are on record, therefore, finding of

the tribunal paying compensation against the medical expenses is not to be interfered. The discharge card shows that claimant was admitted in the hospital from 11/10/2002 till 09/12/2002 i.e. approximately 60 days. The age of the injured at the time of accident was 38 years. Admittedly, except the evidence of the claimant, no other evidence is on record to show that he was running a business as a cloth merchant and was selling the cloths by moving one place to another. Claimant placed reliance on the income tax returns for the assessment year of 2002-2003. The said income tax was paid for the period 01/04/2002 to 31/03/2003 wherein his income was shown as Rs.72,000/-. The Tribunal had also considered his evidence by taking into consideration Rs.50,000/- by adding the loss of future income and calculated the compensation by considering 60% disability. It is submitted on behalf of the appellant that the tribunal ought to have considered 100% disability and ought to have awarded the compensation.

14. The principles are discussed by the Hon'ble Apex Court while granting the compensation in an injury cases, in the case of Raj Kumar Vs. Ajay Kumar (supra) and held that functional disability as operative criteria is distinguished from physical disability. Disability certificate extent of disability of a limb cannot be assumed to the extent of disability of a whole body. The Tribunal should not mechanically apply

percentage of permanent physical disability as percentage of economic loss or loss of earning capacity. The Hon'ble Apex Court held that the ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability, (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carry on or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lessor scale of activities and functions so that he continue to earn or can continue to earn his livelihood.

15. The Hon'ble Apex Court also referred some examples that if the left hand of the claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually

be 100%, as he is neither able to driver or do carpentary. On the other hand, if the claimant was a Clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a Clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of driver or carpenter, nor 60% which is actual physical disability.

16. In the light of the above principles if evidence in this case is appreciated, the evidence of the claimant as well as the disability certificate shows that the claimant was left handed person. Thus, in this case, the claimant has received the injuries on his left hand which resulted into amputation of his left hand. Thus, the disability sustained by him is 100% as he is unable to work by his right hand. Now it has to be seen whether due to the said injuries his entire occupation is affected. If the evidence of the claimant is considered that he was doing the business as a cloth merchant and was selling the cloths from place to place. In the above situation, admittedly the business will remain with him as it is. But he will sustain loss in a managerial capacity, as he has to take the assistance of somebody to lift the bundles of the cloths to carry it from one place to another. In such circumstances, normal rule about deprivation of income is not strictly applicable in this case. The Hon'ble Apex Court has dealt with this issue in the case of *State of*

Haryana and anr. Vs. Jasbir Kaur and ors. (2003) 7 SCC 484 and held that 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. The statutory provisions clearly indicate the compensation must be “just” and cannot be a bonanza; not a source of profit; but the same should not be a pittance. It is further held that the land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source.

17. Same ratio is applicable in the present case also. The applicant can run his business by engaging a person. Thus, his loss is in a managerial capacity. If he employed a person to assist him in carrying the stock from one place to another, he has to incur Rs.5000/- to 6000/- towards the expenses for engaging the said person. By

considering his expenses towards the assistance Rs.6000/- per month, the yearly loss of income comes to Rs.72,000/- per year. By applying the multiplier, as he was 38 years of age at the time of accident in view of Sarla Verma (supra) would be 16. (Rs.72,000/- x 16 = Rs.11,52,000/-). In addition to that he is entitled to receive the compensation towards loss of amenities as Rs.1,00,000/-. Besides the above amount, he is entitled to receive the compensation of Rs.28,800/- as a medical expenses, Rs.10,000/- towards special diet, Rs.10,000/- towards conveyance and Rs.15,000/- towards attendance. Rs.13,15,800/- is the total amount which the appellant is entitled to receive. Though learned Counsel placed reliance on catena of decisions but said decisions are based on the facts of the concerned case. In view of the decisions of the Hon'ble Apex Court in case of Pranay Sethi, Sarla Verma and Raj Kumar Vs. Ajay Kumar (supra) wherein the guiding principles are narrated while awarding the compensation is to be taken into consideration. In view of the above decisions, the appellant is entitled to receive the compensation of Rs.13,15,800/-.

18. In the light of the above discussion, the appeal deserves to be allowed partly. Hence I proceed to pass following order :

- (i) First appeal is partly allowed.

(ii) The appellant is entitled to receive the amount of compensation of Rs.13,15,800/- after deducting the compensation awarded by the Tribunal along with the interest @ 7.5% per annum including the no fault liability.

(iii) The respondent Nos.1 and 2 shall jointly and severally pay the amount of compensation along with the interest within 10 weeks from the receipt of the copy of the judgment.

(iv) The appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*