



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

FIRST APPEAL NO.443 OF 2019

Milind Ramesh Velhankar
Aged about 48 years,
Occupation – Service,
R/o. Plot No.218, Manish Layout,
(Near Swawalambi Nagar)
Bhamti, Nagpur

...APPELLANT

VERSUS

1. Depot Manager,
Maharashtra State Road Transport
Corporation, GaganBawda,
District Kolhapur
2. The Controller,
M.S.R.T.C. Near Railway Station
Nagpur

...RESPONDENTS

Mrs. B.J. Murkute, Advocate for the appellant.
Shri V.H. Kedar, Advocate for respondent Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 27, 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 dated 25/09/2017 in Claim Petition No.795/2010 passed by

Motor Accident Claims Tribunal, Nagpur awarding compensation of Rs.3,41,993/-. The appeal is for enhancement of compensation.

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

A] On 04/12/2009, the claimant was travelling by bus bearing No.MH-12-CH-7984 from Mahabaleshwar to Panji via Gagan Bawda. At the relevant time, the bus driver has driven the bus in an excessive speed in a rash and negligent manner. In the result he could not control the bus and bus dashed against tree situated at the road side. In the said accident, the appellant suffered grievous injuries which resulted into amputation of his left forearm from middle. He was treated in CPR Hospital, Kolhapur from 24/12/2009 to 25/12/2009. The injuries sustained by him resulted into 65% of permanent disability. The crime was registered against the bus driver vide crime No.01/2010 at Gagan Bawda police station.

4. As per contention of the appellant, at the time of accident he was 40 years old, serving in Ordinance Factory as a labour and was drawing salary of Rs.17,221/- per month. Due to the accidental injuries now he is unable to work with two hands, therefore, he is claiming compensation under the pecuniary and non-pecuniary heads.

5. In response to the notice, the respondent – M.S.R.T.C. resisted the claim on the ground that the alleged accident took place as one trailer was coming from opposite side and bus driver has avoided the accident with the said trailer. Therefore, the claimant is not entitled for any compensation.

6. To substantiate the contention, the appellant has examined himself vide Exhibit 22-B and also examined Dr. H.V. Kharkar at Exhibit 35, and PW-3 Mehfooz Alam at Exhibit 49 to prove the income. Besides, oral evidence he placed reliance on police papers i.e. copy of the charge-sheet Exhibit 23 and medical papers i.e. discharge card of Poona Hospital and Research Centre, Pune and medical bills as well as Disability Certificate. No evidence was adduced by the respondent – M.S.R.T.C.

7. After appreciation of the evidence, the Tribunal has observed that the appellant has sustained the grievous injuries which resulted into amputation of left hand. The tribunal further observed that at the time of accident, appellant was serving as a Labour and subsequent to the accident, he has been promoted to the post of Blacksmith and was earning Rs.28,000/- per month. Thus, there is no functional disability and appellant has not sustained loss of income due to the accidental injuries and awarded the compensation under the head of medical

expenses, loss of amenities of life and towards the damages against the permanent disability.

8. Being aggrieved and dissatisfied with the judgment and award, present appeal is preferred on the ground that the appellant has sustained grievous injuries in the accident which resulted into amputation of left hand. Now the appellant has to undergo pain and sufferings throughout his life. He is entitled to receive the compensation towards loss of income by applying the multiplier method. The appellant has claimed the enhanced amount of compensation.

9. Heard Mrs. Murkute, learned Counsel for the appellant. She reiterated that as the claimant has sustained 65% of permanent disability hence, he is entitled to receive the compensation by applying the multiplier method considering future prospects. Hence, appeal deserves to be allowed.

10. *Per contra*, Shri V.H. Kedar, learned Counsel learned Counsel for the respondents submitted that the evidence of the claimant – appellant itself shows that though his left hand was amputated it was not resulted into functional disability. His evidence shows that after accident, he was promoted on the higher post and not sustained any loss

of income. The award of compensation is just and proper and no interference is called for.

11. Learned Counsel for the appellant placed reliance on ***United India Insurance Co. Ltd. Vs. Smt. Kunti Binod Pande and ors. 2020 (1) Bom.C.R. 629, New India Assurance Co. Ltd. Vs. Ashish Ravindra Kulkarni and ors. 2020 (1) Bom.C.R. 640, Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and anr. 2010 LawSuit (SC) 654.***

12. The issue involved in the present appeal is only whether the appellant is entitled for enhanced amount of compensation. The appellant has adduced his evidence before the Tribunal and reiterated that in the alleged accident he sustained grievous injuries which resulted into amputation of left hand from the middle portion and disability assessed is 65%. His evidence further shows that at the time of accident, he was 40 years old and was serving in Ordinance Factory and due to the accidental injuries, now he is suffering from inconvenience and deprived from the amenities of life.

13. His cross-examination shows that after accident, he was promoted from Labour to Blacksmith and his income was also increased. Besides his oral evidence, he has examined PW-2 - Dr. Kharkar on commission to prove the disability. The medical evidence shows that the

appellant was admitted in Poona hospital from 25/12/2009. He had fractures of both the bones of forearm left with loss of skin of 10 x 10 cm. There is fracture of radius ulna and vascular injury with bone loss. His left forearm was amputated. PW-3 – Mehfooz Alam Kamruddin was examined to prove the income. As per evidence of PW-3 he is serving in Ordinance Factory. The appellant is an employee of their factory and drawing salary of Rs.28,000/- per month. He produced on record payment slips. He also admitted that the appellant still working in this factory after the accident.

14. 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 in 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 has 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 the case of ***National Insurance Company***

Ltd. Vs. Pranay Sethi (2017) 16 SCC 680 also dealt with the 'just compensation'. The Hon'ble Apex Court held that Section 168 of the Motor Vehicles Act, 1988 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.

15. In the light of the above principles the claim of the appellant for the compensation is to be appreciated and ascertained. Admittedly, the M.S.R.T.C. has not challenged the judgment and award.

16. The Tribunal has awarded the compensation of Rs.1,41,993/- towards the medical bills. The original medical bills are on record which are proved by PW-2 - Dr. Kharkar. Therefore, the finding of the Tribunal paying compensation against the medical bills is not to be interfered. The age of the injured at the time of accident was 40 years. The claimant placed reliance on the evidence of PW-3 – Mehfooz Alam Kamruddin who deposed that the appellant was working in his factory and drawing salary of Rs.28,000/- per month. He placed on record the payment slip Exhibit 51.

17. 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 and anr. (2011) 1 SCC 343*** 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 3 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 lesser scale of activities and functions so that he continuous to earn or can continue to earn his livelihood.

18. The Hon'ble Apex Court also referred some examples that if the left forearm of a 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 drive or do carpentry. 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 a driver or carpenter, nor 60% which is the actual physical disability.

19. In the light of the above principles if evidence in this case is appreciated, the evidence of the claimant as well as PW-3 – Mehfooz Kamruddin shows that after the accident, the appellant is still in service and promoted after the accident. Thus, the evidence shows that though the claimant has sustained grievous injuries in the accident and his left forearm was amputated but it has not affected his avocation and profession. It is apparent that the appellant has not sustained any functional disability. It was only a physical disability. In the instant case, the appellant was serving in Ordinance Factory. The evidence further

shows that he was promoted after the accident. Thus, it was necessary for the appellant to have produce some evidence to show that his physical permanent disability has also affected adversely and resulted into functional disability. The tribunal had considered this aspect and awarded the compensation towards loss of amenities of life and towards disability. Considering the fact that, the appellant has lost his forearm in the accident due to the accidental injuries, he has to undergo severe mental agony, therefore, he is entitled to receive enhanced amount of compensation under the head of permanent disability. The Tribunal has awarded Rs.75,000/- towards damages in respect of permanent disability, it can be enhanced upto Rs.1,50,000/- under the head of permanent disability. In addition to that, the appellant is entitled to receive Rs.1,50,000/- towards the loss of amenities of life considering he has to undergo discomfort, inconvenience and hardship. The appellant is also entitled to receive an amount of Rs.20,000/- towards conveyance as he has taken treatment in Poona Hospital, Pune which is more than 800 kilometeres from his native place Nagpur. He is also entitled to receive an amount of Rs.10,000/- towards special diet. He has to engage an attendant during his treatment period, on that count also he is entitled to receive an amount of Rs.15,000/-. Thus, total compensation amount the claimant is entitled to receive is Rs.4,86,993/-.

20. Though the learned Counsel placed reliance on the various decisions of this Court, but same are not helpful as facts are not identical with the present case.

21. In view of the above discussion, the appellant is entitled to receive the amount of compensation of Rs.4,86,993/-.

22. 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 an amount of compensation of Rs.4,86,993/- after deducting the compensation awarded by the Tribunal along with the interest @ 7.5% per annum including the no fault liability.

(iii) Respondent No.1 shall 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.)