



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3213 OF 2018

Bhagwat Garbad Mahajan
Age: 65 years, Occu. Agriculture,
R/o. Anturli, Taluka- Muktainagar,
District- Jalgaon

...APPELLANT
[Orig. Claimant]

VERSUS

1. Jasmansingh Mishrilal
Age: 53 years, Occu. Business,
R/o. C/o. R.K.R.C. Transport,
Tatibandh, Raipur, Pin-492 001
Dist. Raipur, Chhatisgarh.

2. New India Insurance Co. Ltd.,
Mandore Market, Behind Ambedkar
Market, Jalgaon, Taluka & Dist. Jalgaon. **...RESPONDENTS**
[Orig. Respondents]

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Mr. Girish S. Rane, Advocate for appellant
Mr. Ajit B. Kadethankar, Advocate for respondent No. 2
Respondent No. 1 served through paper publication

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 11th JULY, 2024
PRONOUNCED ON: 18th JULY, 2024

ORDER :

1. Appellant/Claimant has filed this appeal challenging the judgment and award passed by Member, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 406/2015, seeking enhancement of compensation.

2. Claimant is agriculturist and is doing allied business.

Bhagyawant Punde

On 02.05.2015 at about 2.45 pm, claimant was proceeding in Bolero jeep No. MH-19-AP-0034 on Jalgaon- Bhusaval highway, on Vaghur river bridge one trailer No. CG-04-HS-8125 came from opposite direction and gave dash to the Bolero jeep. In the said accident, claimant suffered injuries to his chest, left hand, shoulder, waist and fracture to neck. He was admitted in Dr. Ulhas Patil Medical College and Hospital, Jalgaon and thereafter at Bombay Hospital and Research Centre, Mumbai for treatment. Many operations were performed on the claimant, for which claimant had incurred Rs. 4,00,000/- towards medical expenses. He therefore filed claim petition for compensation of Rs. 5,00,000/-.

3. Respondent No. 1/owner of the trailer, though served failed to appear and claim proceeded *ex parte* against him.

4. Respondent No. 2/Insurance Company opposed the claim by filing written statement, denying all the averments in the claim petition. It is contended that claim petition is not maintainable for non joinder of driver and insurance company of Bolero jeep, driver of the jeep had no valid and effective driving license at the time of accident. Hence, liability to pay compensation was denied.

5. The Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs. 96,000/- inclusive of no fault liability amount of Rs. 25,000/- along with interest @ 6% per annum. Claimant is aggrieved by the quantum of compensation.

6. Heard learned advocate for claimant and learned advocate for the insurance company. Perused the record.

7. Learned advocate for claimant assailed the quantum of compensation awarded by the Tribunal contending that though there is a certificate showing permanent disability of 60% suffered by claimant, Tribunal has wrongly assessed temporary disability at 20%. Though, documents of medical treatment and bills were produced on record, Tribunal has ignored them on the ground that author of documents are not examined by claimant. Claimant was hospitalized for 17 days, however, meager compensation of Rs. 10,000/- is awarded by the Tribunal under the head of pain and suffering and loss of amenities. Similarly, only Rs. 10,000/- is awarded under the head of loss of earning for the period of treatment and recovery of the claimant. He therefore submits that compensation awarded by the Tribunal is not just and fair and same is grossly inadequate. In support of

his case, he has relied on *Dattatraya Laxman Shinde v. Nana Raghunath Hire* and others, 2011(6) ABR (NOC) 564 (Bom) and *Rekha Jain v. National Insurance Co. Ltd.*, AIR 2013, Supreme Court 3429.

8. Learned advocate for insurance company, on the other hand, supported the impugned judgment. He submits that claimant has merely produced medical bills and documents which are not proved on record, in accordance with law and therefore, Tribunal has rightly awarded Rs. 30,000/- towards lumpsum medical expenses. He submits that Tribunal has assigned proper reasons and no case is made out by the claimant to interfere in the same. He therefore submits that first appeal may be dismissed.

9. Indisputably, claimant has received injuries in accident dated 02.05.2015. It is a matter of record that FIR was lodged against driver of the trailer which gave dash to the Bolero, for rash and negligent driving and causing accident. Claimant has placed on record documents of the treatment taken by him at Dr. Ulhas Patil Hospital and Bombay Hospital. Diagnosis of claimant is "*RTA C Head Injury with neck trauma.*" Discharge Summary (Exhibit-19/2) of Bombay Hospital records

"RTA and loss of sensation and movement in ① UL since the accident two days ago, multiple injuries over face." To prove the injuries suffered by him in the accident claimant examined PW2 Dr. Sachin Ahire, who has deposed that claimant had suffered brachial plexus injury to left side with monoparesis of left upper limb with no grip, his left hand has no sense, no power, he is not able to do any work by his left hand and 60% permanent disability in respect of his whole body is seen. PW2 has proved the disability certificate (Exhibit-25) issued by Civil Hospital Board.

10. In spite of this evidence on record, without assigning proper reasons, the Tribunal has erroneously proceeded to hold the disability of claimant as temporary disability of 20%. The Tribunal not being an expert could not have assessed permanent disability of claimant at 20%, contrary to the material on record. The observations of the Tribunal are contrary to the disability certificate and the evidence of PW2. The Tribunal has drawn unwarranted inference and has based this finding on surmises and conjecture. This finding is therefore erroneous and same is unsustainable.

11. It is well settled that the Tribunal is not a Court and

hence is not bound by strict rules of pleadings and evidence. Claimant has to prove his case on the basis of preponderance of probabilities. In Dattatraya Shinde (supra) the claimant had produced voluminous original documents such as medical bills, vouchers and documents evidencing expenditure of medicines, medical treatment, special diet, traveling expenses and residence of relatives and friends. Insurance company did not admit these documents. In the examination-in-chief claimant made reference to all the bills and vouchers. The Tribunal did not take those bills and vouchers into consideration, on the ground that they were not proved in accordance with law. In these facts, learned Single Judge of this Court held:

"the Tribunal constituted under the said Act is not bound by strict rules of evidence. Therefore, the said bills and vouchers ought to have taken into consideration by the Tribunal in absence of the specific case made out that the documents were fabricated."

12. In Rekha Jain (supra), the Tribunal had taken into consideration the medical bills and vouchers produced on record by the claimant, which were also referred to in the evidence of claimant. The Tribunal marked these documents, in spite of objections from the insurance company and considered them while awarding compensation. The High Court interfered in the

said finding and reduced the compensation of Rs. 17,51,726/- to Rs. 7,77,000/-. In these facts, Apex Court observed thus:

"This has been very lightly interfered with by the learned Judge of the High Court without application of mind and consideration of legal evidence on record particularly in the absence of rebuttal evidence and further, the Insurance Company was unable to show that the documents referred to supra produced by the appellant in her evidence are fabricated documents, which have been produced with deliberate intention to prefer a false claim in this regard as contended by the learned counsel on behalf of the Insurance Company."

13. Both the above rulings support the case of claimant that the Tribunal erred in ignoring the bills and vouchers of medical expenses of Rs. 2,90,178/- in absence of any rebuttal evidence by insurance company. When the claimant has produced on record medical bills and vouchers showing that he had incurred total amount of Rs. 2,90,178/-, the Tribunal has erroneously proceeded to award Rs. 30,000/- towards medical and hospital bills in lumpsum, on the ground that author of the medical bills are not examined. In the light of aforesaid rulings, said finding is unsustainable.

14. Taking into consideration the fact that claimant has suffered 60% permanent disability and considering the age of claimant, he is entitled for following compensation.

Bhagyawant Punde

Sr. No.	Particulars	Compensation
a.	60% Disability	Rs. 1,00,000/-
b.	Medical Expenses	Rs. 2,90,178/-
c.	Pain and Suffering and Loss of Amenities	Rs. 25,000/-
	Total	Rs. 4,15,178/-
Compensation awarded by the Tribunal: Disability- Rs. 36000/- Medical Expenses- Rs.30,000/- Pain and Suffering and loss of amenities- 10,000/-		Rs.76,000/-
Total Enhanced Compensation (Rs. 4,15,178 - Rs. 76,000)		Rs.3,39,178/-

15. In the result following order:

ORDER

- (I) First Appeal is partly allowed.
- (II) The judgment and award passed by Tribunal is modified.
- (III) Respondents are jointly and severally liable to pay enhanced compensation of Rs. 3,39,178/- to claimant, along with interest @ 6% p.a. till realization.
- (IV) Respondents shall deposit compensation amount in the Tribunal within 12 weeks from today. Claimant will be entitled to withdraw the same.
- (V) Respondents to pay proportionate costs.

[NITIN B. SURYAWANSHI, J.]