



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3310 OF 2019
WITH
CIVIL APPLICATION NO. 7974 OF 2022

Dashrath Dhondiba More
Age- 43 years, Occ - Agri and Milk Business
At Present Nil
R/o Telangsi, Taluka - Jamkhed,
District - Ahmednagar

APPELLANT

VERSUS

1. Head Master
Sahyadri International School
Osmanabad
R/o 3, 4, 5 and 6, Kakde Plots
In front of Gas Godown
Osmanabad Taluka & District - Osmanabad
2. The Divisional Manager,
United India Insurance Co. Ltd.,
Kisan - Kranti Building
Mrket Yard, Ahmednagar - 414 001

RESPONDENTS

.....
Miss. Sonali Somwanshi h/f Mr. N. L. Jadhav, Advocate for
appellant

Mr. V. B. Deshmukh, Advocate for respondent No.1

Mr. Suraj R. Bagal, Advocate for respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 6th AUGUST, 2024
PRONOUNCED ON : 21st AUGUST, 2024

JUDGMENT :

1. This appeal, filed under section 173 of the Motor Vehicles Act by the claimant, challenges the judgment and award dated

22nd July, 2019 passed by Motor Accident Claims Tribunal, Ahmednagar in MACP No. 462 of 2016, to the extent of quantum of compensation.

2. On 10th February, 2016, at about 9.30 a.m. claimant was proceeding on his Bajaj Pulsar Motorcycle, along with his wife towards Upla, Taluka and District – Osmanabad, to attend funeral of grandmother of his wife. When they reached in front of Ghogre High school, Upla, School bus No. MH-25/T-675, came from opposite direction in high and excessive speed and gave dash to the motorcycle. In the accident, the claimant suffered fracture injuries to his legs, ribs, right wrist, face as well as other parts of the body. He was taken to Government Hospital, Osmanabad and thereafter was shifted to Civil Hospital, Solapur, where he was admitted from 10th February, 2016 to 11th February, 2016, thereafter, he was admitted in Jagdale Mama Hospital, Barshi from 11th February to 14th February, 2016. Thereafter, he was shifted to Veer Hospital and to Patil Hospital, Ahmednagar for treatment of fracture injuries. He incurred expenses of Rs.4 lakh towards the medical treatment and other allied expenses. Due to the accident, he sustained 60% permanent disability and hence claimed compensation of Rs.20 lakh.

3. Opponent No.1 failed to appear and *ex parte* order was

passed against him.

4. Opponent No.2 / Insurance Company appeared and opposed the claim, by filing written statement. It is claimed that the driver of offending bus was not possessing badge, opponent No.1 committed fraud by replacing driver, who caused the accident, breach of terms and conditions of the policy was also claimed. It is also claimed that the claimant was not holding driving licence and the motorcycle involved in the accident was not registered. Hence, it was prayed to dismiss the claim petition.

5. The Tribunal, after recording evidence and hearing the parties, partly allowed the claim and awarded compensation of Rs.3 lakh to the claimant along with interest @ 7% p.a. The claimant is aggrieved by the quantum of compensation.

6. Heard learned advocate for appellant – claimant and learned advocate for respondent No. 2 – insurance company. Perused the record and proceedings and the impugned judgment and award and the citations relied on by the learned advocates.

7. Learned advocate for the claimant submits that though the claimant has suffered 60% permanent disability, meager compensation is awarded by the Tribunal. The Tribunal has

erroneously held the disability of the claimant to be at 30%, contrary to the opinion of the expert. Loss of future earning is not considered by the Tribunal. The Tribunal further erred in holding that there was contributory negligence on the part of the claimant. Inadequate medical expenses are granted by the Tribunal. Learned advocate for the claimant, in support of her submissions, has relied on **“Mohd. Sabeer @ Shabir Hussain V/s Regional Manager UP State Road Transport Corporation) 2022 Life Law (SC) 1017.**

8. On the other hand, learned advocate for the Insurance Company has supported the impugned judgment and award. He submits that the Tribunal is justified in holding the claimant's disability to be 30% and the Tribunal has rightly awarded compensation of Rs.3 lakh, considering the material on record. No case is, therefore, made out by the claimant to interfere in the impugned judgment and award. The first appeal is therefore, liable to be dismissed. Learned advocate for the respondent, in support of his submissions relied on **“Banarsi and Others V/s Ram Phal” 2003 (9) SCC 606.**

9. Record indicates that the accident is not disputed. Claimant has placed on record documents at Exhibits – 22 to 29/1 to 38, 30/1 to 7 and 31/1 to 3 in support of his claim. He has also

placed on record the receipts of the payments made by him towards his medical treatment and the x-ray reports. He has also examined Dr. Vijay Karbhari Patil in support of the claim, who has stated that the claimant suffered following injuries:

- I. Fracture right neck femur
- ii. Fracture right shaft femur
- iii. Fracture right lower end radius
- iv. Fracture right side ribs
- v. Fracture right maxill mandible and zygoma

10. Dr. Patil has proved the medical bills of surgery and treatment given to the claimant. He has given disability certificate (Exhibit-26) stating the claimant has suffered 60% permanent disability, due to -

- I. Uniting fracture neck Femur fracture shaft femur right
- ii. stiff knee and hip right
- iii. Fracture to Maxilla right
- iv. fracture to UE radius right stiffness
- v. reduced lung capacity

In cross-examination, he has admitted that *"it is correct to suggest that, except fracture of right femur shaft, other fractures are united"*. He has also admitted that bills are issued by another person in his hospital and those bills contain serial numbers.

Though document at Exhibit-32 is a final bill, it does not bear chronological number.

11. Document at Exhibit-32 is titled as “estimate”, however a revenue stamp is affixed on it, on which Dr. Patil has put his signature. Though it does not contain serial number, in view of revenue stamp affixed on it and Dr. Patil has put his signature on the same, it appears that the same is issued acknowledging receipt of payment of Rs.1,80,320/-. Hence that needs to be taken into consideration. The claimant has also placed on record the discharge summary.

12. In his evidence, Dr. Patil has categorically stated that because the claimant sustained fracture to femur with delayed union with right stiff knee and hip resulting in stiffness of right knee and hip. Accordingly, he had issued disability certificate (Exhibit-26) of 60% disability to the claimant. He has further stated that *“For aforesaid disabilities, patient is not able to do manual labour works like sugarcane cutting, milk sucking, transporting and selling and agriculture. Besides suffering limitations to carry on his day to day activities . However, he can do sedentary work”*.

13. From the evidence of Dr. Patil, it is clear that the claimant has suffered 60% disability and he has incurred expenses of

more than Rs.2 lakh on medical treatment. The medical bills are placed on record and those are proved by the claimant. However, the Tribunal has held that, *“The fracture injuries sustained by the Petitioner are curable with some minor deformity. However, the disability to the extent of 60% prima facie appears to be on the higher side and exorbitant. The disability, at the most can be taken as 30% as contended by the Opponent No.2. However, the same does not appears to be functional disability.”*

The Tribunal has not appreciated the evidence on record, in the proper perspective and has erroneously recorded said finding. In spite of there being evidence of the expert doctor proving the disability to the extent of 60%, the Tribunal has erroneously proceeded to accept the contention of the insurance company that the disability at the most can be taken as 30%. While recording the said findings, the Tribunal has failed to consider the categorical evidence of the doctor on record that the claimant suffered fractures to right neck femur, right shaft femur, right lower end radius, right side ribs and right maxilla mandible and zygoma and he has reduced lung capacity due to fracture of multiple ribs. Finding of 30% disability, therefore, being contrary to the evidence on record, can be termed as perverse and cannot be sustained.

14. On perusal of the police papers filed on record by the claimant, the Tribunal has observed that *“On perusal of the pot panchanama, it transpires that the Petitioner gave dash to the driver side wheel of the said bus”*. The Tribunal has further observed *“FIR shows that police registered crime bearing No. I-23 of 2016 against the driver of the said bus”*.

15. In this respect, Judgment of the Apex Court, in ***“Jiju Kuruvila and Others V/s Kunjujamma Mohan and Others” AIR 2013 SC 2293*** can usefully be referred. The Apex Court, in the said judgment has observed :

“24. The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

16. In ***“Bimla Devi and Others V/s Himachal Road Transport Corporation and Others” AIR 2009 SC 2819***, the Apex Court has held that Claimants to establish their case of

occurrence of accident on the touchstone of preponderance of probability and not on standard of proof beyond reasonable doubt". The Apex Court has observed that, :

".....It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard proof beyond reasonable doubt could not have been applied."

17. In view of filing of the FIR against the bus driver, the claimant has discharged initial burden of proving that the accident has taken place due to rash and negligent driving by the bus driver. It is not clear on what basis the Tribunal has come to the conclusion that on perusal of the police papers, it appears that the claimant was negligent at the time of the accident. Said finding, since is not supported by the material placed on record, is liable to be set aside.

18. Claimant has brought on record, evidence showing that claimant is agriculturist and he was taking cash crops in the agricultural land, which he was cultivating on crop sharing basis. Along with the same, claimant was doing milk business and he owned 6 jersey cows and was earning Rs.15,000/- per month from the milk business.

19. In the light of the evidence of the doctor that due to the

permanent disability, the claimant is not in a position to milk the cows and do other agricultural operations, the Tribunal has awarded inadequate compensation to the claimant.

20. Learned advocate for the claimant has relied on **“Mohd Sabeer Husain”** (*supra*). In that case, the claimant had suffered amputation of the lower right limb, a fracture in the medial wall of the bilateral orbit, crush injury to right leg, fracture tibia right leg, exposed vessels and other injuries. As per the disability certificate the Appellant had suffered 70% permanent disability, however, the High Court has held that the claimant suffered only 35% loss of future earnings due to the disability. The Apex Court, held that the High Court erred in holding that the claimant has suffered only 35% functional disability, as he is self employed, who was managing his business. It is also held that the High Court has not applied quantum for future prospects in the compensation granted. It is observed - *“.....It is well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that ‘just compensation’ must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.”*

21. In the case in hand, the Tribunal has not awarded compensation under the head future prospects. After the accident, the owner of the agricultural land, which the claimant was cultivating on crop sharing basis, has cancelled the said arrangement and took away the land from the claimant. After the accident, his jersey cows were required to be sold for his medical treatment. These aspects are ignored by the Tribunal while denying compensation under the head functional disability and future prospects.

22. The Apex Court, in **“Mohd Sabeer Husain”** (*supra*) has held that -

“27. We are of the opinion that while awarding compensation in cases of permanent disability caused to claimants, the courts must look at the case in totality, and must consider the socio-economic background of the claimants. The Appellant herein comes from an economically weaker section of the society.

28. It is almost universally seen that persons from marginalized background often face an additional layer of discrimination due to bodily disabilities. This is because persons from marginalized sections of the society already face severe discrimination due to a lack of social capital, and a new disability more often than not compounds to such discrimination. In such circumstances, to preserve the essence of justice, it becomes the duty of the Court to at the very least restore the claimant as best as possible to the position he was in before the occurrence of the disability, and to do so must award compensation in a liberal manner.”

23. In view of above observations and considering the material placed on record, this Court is of the view that claimant is entitled for following compensation.

Loss of earning capacity due to functional disability	5,00,000
Future prospects @ 40% (5,00,000 X 40%)	2,00,000
Medical Expenses	2,59,000
Non pecuniary head	25,000
Total	9,84,000
Minus Rs.3 lakh (994000 – 300000)	6,84,000
Compensation enhanced	6,84,000

24. In the result, following order:

ORDER

- A. First Appeal is partly allowed with proportionate costs.
- B. Impugned judgment and award dated 22nd July, 2019 passed by Member, Motor Accident Claims Tribunal, Ahmednagar in MACP No. 462 of 2016 is modified to the extent that claimant is awarded enhanced compensation of Rs.684000/- (Rupees Six Lakh Eight Four Thousand), along with 7% interest p.a. from the date of filing of the petition i.e. 20th September, 2016 till its actual realization.
- C. Respondent No. 2- Insurance Company to deposit the enhanced compensation amount along with the interest in

the Motor Accident Claims Tribunal, Ahmednagar, within 12 weeks from the date of receipt of writ of this judgment in the Tribunal.

- D. Claimants to pay Court fee on enhanced compensation as per rules.
- E. In view of disposal of the First Appeal, Civil Application No. 7974 of 2022 is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE