



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 243 OF 2021

Vinod Chhagan Shejwal
Age 31 years, Occu. Nil,
R/o. Village Kamkhed,
Taluka and District Beed.

....Appellant
(Ori. Claimant)

Versus

1. Khaitan Logistic Pvt. Ltd.
A-37, RIICO Industrial Area
Kukas, Jaipur (Rajasthan).
2. Oriental Insurance Co. Ltd.
Through its branch Manager
Branch Office at near Shantaie Hotel
Jalna Road, Beed, Tq. & Dist. Beed.

....Respondents
(Ori. Respondents)

Mr. Shrimant Munde, Advocate for appellant.

Mr. Arun G. Kanade, Advocate for respondent No. 2.

CORAM : KISHORE C. SANT, J.
CLOSED ON : 02/07/2024
DELIVERED ON : 18/07/2024

ORDER :

1. This appeal is by the original claimant, challenging judgment and order dated 7.4.2016 passed in MACP 292/2014 by the learned President, Motor Accident Claims Tribunal, Beed, to the extent of not allowing the claim in it's entirety. The appellant/original claimant has thus filed this appeal for enhancement of compensation. Respondent No. 1 is original respondent No. 1/owner of the vehicle. Respondent No. 2 is the Insurance Company with whom the vehicle of respondent No. 1 was insured. (For the sake of convenience, the parties are referred as per their original status in the claim petition.)

2. Facts giving rise to the present first appeal are that the claimant received injury on 7.6.2014 when he was going in the rickshaw bearing No. MH-23/H-9676 from Beed to his village Kamkheda at around 11 a.m. on Beed Aurangabad road. The container bearing No. RJ-14/JC-1469 gave dash to the rickshaw. Because of the said accident, the claimant received serious injuries. He was admitted to General Hospital, Beed and after preliminary treatment he was shifted to Aurangabad. He was discharged on 22.6.2014. Complaint is also lodged against the driver of the container.

3. The case of the claimant is that because of the said accident he received injuries and has acquired 30% permanent disability. Though disability is only to the extent of 30%, he has lost his earning capacity. He also prayed compensation for medical expenses.

4. Respondent No. 2 opposed the claim. It was a defence that the claimant has not added the owner of the rickshaw and the Insurance company of the rickshaw as party to the proceeding. **The Claimant was working as labour and taking education in B.A.**

5. The learned Tribunal, after considering the evidence and the documents on record has granted lump-sum compensation of Rs. 2,50,000/- with interest at the rate of 8% p.a. from the date of filing of the claim petition.

6. Mr. Shrimant Munde, learned advocate for the claimant vehemently

argued appeal. He submits that the income of the applicant was Rs.4500/- p.m. His age was 26 years at the time of accident and multiplier of 18 was thus applied. Though disability was only 30%, loss of earning capacity was 100%. He submits that the Tribunal ought to have granted Rs. 9,72,000/- for loss of earning, towards medical expenses of Rs. 2,17,256/-, towards future prospects Rs.3,00,000/-, towards pain and suffering Rs.50,000/- and towards travelling, special diet and others amount of Rs. 20,000/-. He further submits that total compensation of Rs. 15,59,256/- ought to have been granted. In support of the claim, the learned advocate for the claimant relied upon the following judgments :-

(i) **National Insurance Co. Ltd. Vs. Nilesch Suresh Bhandari**, reported in ALL MR-2022-3-524, decided by this Court at Principal Seat in First Appeal No. 9699/2020 on 7.3.2022.

(ii) **Yadav Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. & Anr.**, reported in 2010 AIR (SC) 3741.

(iii) **Sunil Kumar Vs. Ram Singh Gaud & Ors.**, reported in 2008 ACJ 8 and

(iv) **Mohd. Sabeer @ Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation**, 2023 AIR (SC) 186.

(v) **Yashodamma S. Vs. Regional Manager Reliance General Insurance Co. Limited and Anr.**, 2023 ACJ 605.

7. The learned advocate for the Insurance Company vehemently opposed the appeal. He submits that the applicant could not produce on record any material to show that he was working as a labour. Though the appellant acquired permanent disability to the extent of 30%, still he is in position to work. The injury certificate produced on record clearly show that the injuries suffered were simple injuries. The applicant could produce bills only up to Rs.2,17,256/- towards medial and hospitalization expenses.

Nothing is produced on record to prove the exact income. The Court has therefore rightly considered the case. In the present case, there is no death claim or amputation resulting into loss of 100% earning capacity and therefore, future prospects need not be considered. In support of above submission, the learned counsel for Insurance Company has relied upon the following judgments :-

(i) **National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017) 16 SCC 680 and**

(ii) **Sidram Vs. The Divisional Manager, United India Insurance Co. Ltd. & Anr., 2022 LiveLaw (SC) 968.**

8. On considering the arguments and the judgment, following questions arise for consideration of this Court.

- (I) Whether the claimant is entitled to the compensation as prayed for ?
- (II) Whether 30% disability has resulted into loss of total earning capacity of the claimant ?
- (III) Whether claimant is entitled to future prospects ?

9. In the case of **Nilesh Bhandari** (supra), the claimant established that he had sustained severe bodily injuries and was admitted in various hospitals. He was required to undergo multiple operations because of the multiple fractures and long hospitalization requiring to spend huge amount. It was the case where claimant had suffered disability resulting into loss of total earning capacity. In that case, future prospects were computed to the extent of 40%. In the case of **Yadav Kumar** (supra), the Supreme Court considered the difference between the damages and compensation. It is stated that the damages are only given for the injury which is suffered by

the party whereas the compensation stands on a slightly higher footing and the purpose is to compensate a person from the losses which he suffers due to accident. In that case, the Trial Court and the High Court had not granted compensation towards loss of future earning. In that case also the applicant had suffered various injuries resulting into loss of 100% working capacity. In the case of **Mohd. Sabeer** (supra), the Supreme Court considered that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the permanent disability on his earning capacity. In that view future prospects were considered. In the said case, the claimant had suffered amputation of lower right leg. He had suffered 70% disability. The High Court had considered the disability only to the extent of 35%. In that view of the matter the Court granted future prospects.

10. This Court finds that in all the judgments either there was loss of 100% earning capacity or the claimants were totally disabled and in that view, future prospects were granted.

11. So far as the judgment relied upon by the Insurance Company is concerned, in the case of **Pranay Sethi** (supra) the Hon'ble Apex Court was considering the case of death claim and in that view, the future prospects were granted. In the case of **Sidram** (supra), the Hon'ble Apex Court in para 31 held that the future prospectus are to be considered in case of death of victim.

12. Considering this position, this Court finds in the present case that it is

injury claim and the claimant has suffered 30% disability. From the evidence of the doctor examined by the claimant, it has come on record that the injuries suffered by the claimant were simple injuries. The doctor further accepted that the claimant can do light work. Thus, no case is made out by the claimant that he has lost 100% capacity to work. From the record, it is seen that the claimant had produced on record the receipts of medicines and medical bills. The Trial Court on considering that has granted amount of Rs.1,25,000/- towards medical expenses to the claimant. From the evidence of PW 2, the disability certificate, Exh. 41/C issued by the doctor shows that the disability is to the extent of 30%. There is destruction or permanent impairing of the powers of any member of joint. Except this, there is no evidence to show that the claimant suffered earning capacity to the extent of 100%. The claimant also could not prove that he has lost 100% earning capacity. Thus, this Court holds that the learned Trial Court has not committed any error in assessing the disability to the extent of 30%. In view of the judgment, it is clear that since it is not the death claim or amputation of any limb or 100% loss of earning capacity, there is no question of future prospects.

13. So far as amount of compensation is concerned, this Court finds that because of 30% disability certainly the claimant will suffer pain for entire life. He is also deprived of pleasures in life to some extent and for that some more amount ought to have been granted by the learned Tribunal. Considering this aspect, this Court finds that the Tribunal has awarded only Rs. 1,25,000/- towards pain and suffering and loss of pleasures in life and Rs. 1,25,000/- towards medical bills. This Court finds that the compensation

ought to have been granted more than Rs. 1,25,000/-. So this Court modifies the amount of compensation as Rs. 2,50,000/- towards pain and suffering and Rs. **2,17,256/-** towards medical expenses. In view of the discussion made above, the questions are thus, answered accordingly and the award is modified as below :-

ORDER

- (I) The appeal is partly allowed with no order as to costs.
- (II) Respondent Nos. 1 and 2 to pay jointly and severally total compensation of **Rs. 2,50,000/- + Rs. 2,17,256/- i.e. Rs. 4,67,256/-** including NFL at the rate of 8% p.a. from the date of filing of the claim petition i.e. **16.9.2014**.
- (III) The respondent Nos. 1 and 2 to deposit the amount along with accrued interest in the office of this Court within twelve weeks from today.
- (IV) The award be modified accordingly. The appeal stands disposed of.

[KISHORE C. SANT, J.]

SSC/