

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 298 OF 2018
WITH
INTERIM APPLICATION NO.2753 OF 2022
IN
FIRST APPEAL NO. 298 OF 2018**

IFFCO-TOKIO General Insurance Co. Ltd.
Office at 1st Floor, Inani Building,
Above Latur Sari Centre, Old Cloth Lane,
Latur-413512 (Ins. Company of above car,
Covering period from 29.09.2013 to 28.09.2014)
Andheri West, Mumbai-52. ...Appellant

V/s.

1. Shahahi Dharamraj Mane,
Age 29 years, Occ: Service,
R/O Savargaon, Rehabilitated in front
of Dr. Londhe, Pofalaj Tqkalamb,
Dist. Osmanabad.

2. Tirpurati Tours and Travels,
Prop. Satish Baburao Kale,
Age:- Adult, Occ: Business,
R/o. A/p. Pangri. Tq. Barshi,
Dist. Solapur.
Owner of Car No. MH-13-A-1060
involved I accidents.

... Respondents

Mr. Rajesh Kanojia with Ms. Riddhi Chavan i/b Res Juris for
Appellant/Applicant.

Mr. R. S. Alange for Respondent No.1.

**CORAM :ABHAY AHUJA, J.
RESERVED ON : 17th AUGUST, 2023
PRONOUNCED ON: 10th JANUARY, 2024.**

JUDGMENT:-

1. This First Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (“the Act”) by the insurance company being aggrieved by the judgment and award dated 6th June, 2018, passed by the Motor Accident Claims Tribunal, Solapur. (the “MACT”), granting compensation to the injured-claimant.

2. On 25th July, 2022, this Court (coram: Anuja Prabhudesai, J) had recorded that the Appellant stated that no statutory defence has been raised and therefore, the notice to the Respondent No. 2-Owner of Indica car No. MH-13/A-1060 involved in the accident had been dispensed with. This Court had also recorded that since the challenge was only to the quantum of the compensation, parties were put to notice that an endeavour would be made to decide the Appeal finally at the stage of admission.

3. Accordingly, this matter has been heard finally at the admission stage.

4. The factum of the accident and that the Respondent No. 1 sustained injuries causing permanent disabilities due to the accident caused by rash and negligent act of driver of the offending vehicle, as held to be proved by the Tribunal has not been disputed by the Appellant and therefore, it would not be necessary to dwell on the same.

5. I have heard the learned Counsel for the Appellant and Respondent No.1 and considered the rival contentions.

6. The Appellant -insurance company is aggrieved that although the earning capacity of Respondent No. 1 was not affected as the Respondent No. 1, who is a teacher still in service post accident, that in his cross-examination, the Respondent No. 1 has admitted that he used to get salary even when he was on leave during the treatment, that there is no loss of income to the Respondent No. 1, either during the medical treatment or post treatment and therefore, as the physical disability has not adversely affected the income / earning of the Respondent No. 1, the Tribunal ought to have just awarded the medical expenses and non pecuniary damages and not the compensation towards the loss of earning capacity.

7. It is also submitted by Mr. Kanojia, learned Counsel for the Appellant- insurance company that the Respondent No. 1 has obtained permanent disability certificate from Dr. Degaonkar, who admittedly has not treated the Respondent No. 1. Learned Counsel refers to paragraph 21 of the impugned judgment as well as the evidence and submits that the doctor had issued a certificate of permanent disability of 56%. However, from the evidence, it was not clear whether it was occupational disability or certificate issued on the basis of the whole body, nor there was any cross-examination over this aspect. It is also recorded that Dr. Degaonkar, does not state that the injury sustained by the Petitioner has made him totally incapable to carry out the occupation which he was carrying out. That the doctor had said that he cannot squat and stand for a long time. That despite finding that the injury suffered by the Petitioner, therefore, cannot be considered as occupational disability to the extent of 56% in the absence of any specification and whether it is the occupational disability or the certificate is given considering the whole body, the Tribunal has without any rationale gone on to hold that it would be just and proper that instead of considering permanent disability to the extent of 56%, permanent disability to the extent of 40% be considered for the purposes of compensation so far as the claim is concerned.

8. Mr. Kanojia, has relied upon the decision of the Hon'ble Supreme Court in the case of *Rajkumar Vs. Ajaykumar and anr.*¹ Learned Counsel would submit that such a certificate is not to be relied upon as the same has not been issued by the treating doctor and is perhaps a ready to use certificate, in which case the Tribunal ought to have constituted a medical board instead of speculating and considering permanent disability to the extent of 40%. Learned Counsel would therefore submit that the impugned judgment and award be, therefore, set aside.

9. On the other hand, Mr. R.S. Alange, learned Counsel for Respondent No. 1 relies upon the decision of the Tribunal and submits that the Tribunal has correctly awarded the compensation. Learned Counsel refers to paragraphs 23 and 24 of the impugned judgment and submits that the Tribunal has clearly not granted any amount for loss of earning during the period of treatment and therefore, the insurance company should not have any grievance. Learned Counsel also refers to the claim application and submits that in the claim application in paragraph 2, it has been clearly submitted that the Applicant will have to undergo treatment / operations, etc on the injuries sustained by him in the accident. That inspite of the

1 (2011) 1 SCC 343.

elaborate treatment for the fracture injuries to the right leg at two places, compound and crush fracture injuries to his right thigh, injuries to his right side toe and right hand and injuries to other parts of the body, for which the Applicant had to take indoor treatment as patient for 17 days in Dr. Deshmukh's hospital and has been operated on four occasions, in view of the fact that a rod has been inserted in his leg, he will require continuous follow up treatment. The Claimant has sustained permanent disablement due to the injuries sustained in the accident, that the Applicant suffers pains in legs, thigh, hands due to the said injuries and the treatment is on going. That the Claimant was bedridden and it has even become difficult for the Claimant to move on his own from one place to another. That it is not possible to stand on own legs and he also gets aches and pains in attending daily pursuits. The longevity has also been adversely affected. It is submitted and also noted that with respect to all these submissions there is no denial of the same in the written statement that was filed on behalf of the Appellant Insurance Company before the Tribunal.

10. Learned Counsel also refers to paragraph 3 of the said application, the relevant portion of which is extracted as under and submits that for

the three months the Respondent No.1 had to be on compulsory leave for which though he got his salary but the Tribunal has not granted any compensation and also his future prospects have been adversely affected.

“So far as the income of the applicant is concerned, as mentioned above, the applicant has been working as teacher and because of accidental injuries, he was required to take compulsory leave for three months which leave applicant could have enjoyed for his own enjoyment. The applicant has in real sense practically suffered loss of three months salary amounting of Rs.1,10,000/- during the said period. Further, the future prospects of the applicant in the service has also been adversely affected because said accidental injuries and permanent disablement suffered thereby.”

11. Referring to the written statement filed by the Appellant, learned Counsel for Respondent No.1 submits that apart from general denial, the reply also refers to a denial that the Applicant was doing tailoring work and getting Rs. 6000-8000 Per month or the denial that the Applicant has lost his future income. Learned Counsel would submit that the Applicant is a male and a teacher and yet surprisingly the reply contains the above incorrect facts and references. This, in my view, is an erroneous reference and can be ignored as it does not appear to be deliberate but perhaps through carelessness of the draftsman.

12. Mr. Kanojia has also filed compilation of documents, *inter alia* containing the evidence and depositions of witnesses.

13. Coming to the Affidavit in evidence of the Respondent No. 1, learned Counsel for the Respondent No. 1 has taken the Court through paragraphs 3 on page 15, 16 and 17 to reiterate the submissions with respect to the accident, injury, the occupation and the loss of service suffered by the Respondent No. 1. Learned Counsel also takes this Court through the cross-examination of the injured, paragraph 1 whereof is quoted as under and submits that there was no question put to the injured claimant with respect to the loss due to future increase and therefore, at this stage the Appellant-insurance company cannot object to the same:-

“1. I am serving as a teacher in Vidhyabhavan High School, Kalamb. Said school is recognized as well as aided by Government. As a teacher I can get medical bill regarding the medical expenses. The family members depend on me also get the reimbursement of medical bill. It is not true that I have submitted the medical bills for reimbursement to my office and received the amount of medical bill accordingly. It is not true that I am deposing falsely that I took a compulsory rest for three months without receiving any salary. It is not true that I am deposing falsely that my monthly salary is Rs. 35,000/-”

14. Referring to the examination in chief as well cross-examination of Dr. Vijay Kashinath Degaonkar, it is submitted that after going through the papers of the injured, the doctor had come to the conclusion that there was 56% physical disability and the certificate dated 23rd May, 2015 was issued by the said doctor. It was also confirmed that because of the disability the claimant could not stand for a long time, nor walk long distance and also not able to squat because of the deformity. Because of the shortening of the lower limb, the injured would be limping. That the disability mentioned in the certificate was permanent. That the doctor had physically, clinically and radiologically examined the claimant. That the certificate was not a formal certificate issued merely on the asking by the claimant nor was it false nor the doctor was deposing falsely about the disability on the movements of the claimant.

15. The learned Counsel for the Appellant has relied on the decision in the case of *Raj Kumar v. Ajay Kumar (supra)* in relation to the certificate of disability issued by Dr. Vijay Kashinath Degaonkar and his examination in chief and cross examination stating that the same ought to be rejected as he was not the treating doctor of the Appellant. It is however to be noted that in paragraph 12 of the said decision, the Court held that mere

production of a disability or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant is tendered for cross examination with reference to the certificate. In the present case, Dr. Vijay Kashinath Degaonkar presented himself for examination in chief as well as cross-examination, which has revealed that the doctor had physically, clinically and radiologically examined the claimant. That the certificate was not a formal certificate issued merely on the asking by the claimant nor was it false nor the doctor was deposing falsely about the disability on the movements of the claimant.

16. The learned Counsel for the Respondent No. 1 has also referred to the certificate dated 7th March, 2016, regarding cost required to be incurred by the Respondent No. 1 towards future treatment, where it is stated that in future the Respondent No.1 would be required to remove the rod fixed in the femur and tibia and that although the same was optional except in case of any emergency on infection. It is also clear from the Doctor's deposition that the certificate issued by him was not a false one.

17. Also the deposition of the senior clerk of the school where the Respondent No. 1 was working viz Vidyabhavan High School, Kalamb has been perused with the assistance of the Advocate for Respondent No. 1, which clearly suggests that the Respondent No.1 had been granted medical leave between 27th January, 2014 to 26th April, 2014. That he was drawing a salary after deduction of Rs. 26,410/-. From the cross-examination it emerges that although the person who is granted medical leave can get salary for the period of medical leave and the school does sanction medical bills of the staff members, but the same has not been sanctioned in the case of the Claimant. This suggests that Respondent No.1 has not been reimbursed the medical bills from the school.

18. With respect to the medical bills, learned Counsel for Respondent No. 1 has taken this Court through the deposition of the pharmacist at Barshi, who has admitted to the medical bills and certified them as true and correct.

19. Thereafter, learned Counsel has taken this Court through the deposition of the accountant of the hospital with respect to the document submitted by the Advocate for the Appellant, who has admitted the expenses for treatment and hospitalization.

20. There is no contrary evidence brought to my notice.

21. Learned Advocate for the Respondent No.1 has relied upon the following decisions in support of his contentions. In the case of ***Union of India Vs. Oswald Anthony Athayde & Ors.***² the issue was whether there was pecuniary loss to the victim of an accident who did not lose his employment as a result of the injuries sustained in the accident and therefore could he have been awarded compensation under the head of prospective loss. In this case the Court held that although as a result of the accident, the employment of the victim of the accident may not have been terminated nor was his pay scale reduced, however it cannot be denied that due to permanent disability, his confidence and ability to undertake travel were affected. Therefore the Court held that although the victim did not suffer pecuniary loss because of the injuries sustained by him, the future prospects of securing better employment were certainly affected.

22. Mr. Alange also referred to the decision in the case of ***Sandeep Khanuja v. Atul Dande and Another***³, where the Court has held that the crucial factor that has to be taken into consideration is to assess whether

² 2005 ACJ 82

³ (2017) 3 SCC 351.

the permanent disability has any adverse effect on the earning capacity of the injured. In that case there was 70% permanent disability suffered by the injured and the Tribunal had held that since the injured had a sitting job his earning capacity would not be affected. The Court held that in having regard to the injuries suffered by the injured, there is definite loss of earning capacity and the same calls for grant of compensation with the adoption of the multiplier method. In the facts of the present case also from Dr. Degaonkar's certificate and deposition, it is clear that because of the disability the claimant could not stand for a long time, nor walk long distance and also not able to squat because of the deformity. Because of the shortening of the lower limb, the injured would be limping. That the disability mentioned in the certificate was permanent. That the doctor had physically, clinically and radiologically examined the claimant. That the certificate was not a formal certificate issued merely on the asking by the claimant nor was it false nor the doctor was deposing falsely about the disability on the movements of the claimant.

23. Learned counsel for the Respondent No.1 relied upon the decision in the case of *Erudhaya Priya v. State Express Transport Corporation*⁴. In

4 AIR 2020 SC 4284

that case the injured had suffered a permanent disability of 31.1% and the Court held that a victim who suffers a permanent or temporary disability occasioned by an accident is entitled to an award of compensation which must cover among others pain, suffering and trauma resulting from the accident, loss of income including future income, inability of the victim to lead a normal life together with its amenities, medical expenses including those that the victim may be required to undertake in the future and loss of expectation of life. The Court held that the principles with respect to future prospects must also be applied in this case where the injured's permanent disability was 31.1%.

24. The decisions in the case of *Sandeep Khanuja v. Atul Dande and Another* (supra) and *Erudhaya Priya Vs. State Express Transport Corporation* (supra) were reiterated in the case of ***Karthik Subramanian v. B. Sarath Babu and Anr.***⁵ where the Court held that the principles laid down in the aforementioned cases would apply to the case where there was a permanent disability of 40% and the multiplier method has to be applied for future prospects and advancement in life and career.

5 2021 ACJ 993.

25. It cannot be disputed that Respondent No.1 did receive salary for the three months of compulsory rest but all the same it cannot be denied that his future prospects have been adversely affected because of the accidental injuries and the permanent disability suffered thereby. Therefore, the submission on behalf of the Appellant-Insurance Company that since Respondent No.1 is still in service post accident and since the Respondent No.1 used to get salary during the period he was on leave for treatment, that there is no loss of income as the physical disability has not adversely affected the income/earning of the Respondent No.1 cannot be countenanced. It is also evident that the Tribunal has not granted any amount for loss of earning during the period of treatment and therefore the Appellant Insurance Company should not have any grievance.

26. In view of the above referred depositions as well as the principles of law elucidated above, it does not appear that there is any error in the decision of the Tribunal. The Tribunal has with respect to the quantum of compensation, and in my view rightly so, considered the evidence as noted above and after considering the facts mentioned in paragraphs 16 to 22, calculated the final quantum after holding that through PW-4, Senior Clerk in Vidhyabhavan High School, Kalamb, the Claimant has proved that

after all the deductions, he was drawing the salary of Rs. 26,410/-. Considering the age of the Petitioner at the time of the accident to be 29 years, which is undisputed, the annual income was computed to be Rs. 3,16,920/-, which in my view cannot be faulted with. With respect to the permanent disability taken as 40%, as noted in paragraph 21 of the impugned judgment and order, although Dr. Degaonkar, after physical, clinical and radiological examination of Claimant has given the certificate of permanent disability of 56%, but because the Tribunal has held that since the disability cannot be considered as occupational disability and in the absence of any specification in the said certificate with respect to permanent disability, it has considered permanent disability to the extent of 40% and not 56%, in my view, no fault can be found in this finding and the Insurance Company certainly cannot be heard to be having any grievance about the reduced percentage. Applying 40% to the per annum income the loss of income per annum has been determined to be 1,26,768/- and in view of the decision of the Hon'ble Supreme Court in the case of *Smt. Sarla Verma and Ors Vs. Delhi Transport Corporation and Anr.*⁶ the multiplier of 17 for the age group of 26-30 has been applied to determine the loss of income to Rs. 21,55,056/-. Applying the decision of

6 (2009) 6 SCC 121

this Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others*⁷, the future prospects, in my view, have correctly been granted to the Petitioner and accordingly, 50% has been added to the actual income of the Petitioner, thus, entitling the Claimant to Rs. 21,55,056/- + Rs. 10,77,528/- = Rs. 32,32,584/- towards the loss of earning capacity due to permanent disability. In addition, Rs. 50,000/-, in my view, has been awarded towards the damages for pain, suffering, trauma, inconvenience, hardship, discomfort, disappointment and mental stress as a consequence of injuries and thereby, in my view, the total compensation of Rs. 34,36,336/- has been awarded to the Claimant on the basis of the principle of just compensation.

27. As noted above, the Tribunal has not granted anything with respect to the loss of earning during the period of treatment and therefore, no grievance can be made by the Appellant-Insurance Company in this regard.

28. In this view of the matter, I am not inclined to interfere with the findings of the Tribunal. There is no error, illegality or perversity in the order of the Tribunal. The Tribunal has correctly granted the

⁷ (2017) 6 SCC 680

compensation of Rs. 34,36,336/- (inclusive of NFL amount) along with future interest @ 9% per annum from the date of the Petition till full realization of the amount, to the Respondent No.1 to be jointly and severally paid by the Appellant and Respondent No.2.

29. The Appeal is accordingly dismissed. Pending interim application accordingly stands disposed. No order as to costs.

(ABHAY AHUJA, J)