



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FIRST APPEAL NO. 327 OF 2019

1. Subhash @ Supaji s/o Shriram Mahalle,
aged about 62 years, Occ. Retired.
2. Nitin s/o Subhash Mahalle,
aged about 32 years, Occ. Advocate.

Both are R/o Shraddha Residency,
Hingna Road, Balode's Duplex,
Akola, Tq. and District – Akola.

...APPELLANTS

Versus

1. Jitendra Prabhakar Yagnik,
Flat No. 103, White Gold Palace,
Shankar Nagar, Near Mandar Petrol Pump,
Cotton Market, Shegaon Naka Road,
Amravati.
2. Shri Kailashchandra Prabhakar Yagnik,
Aged – Adult, Occ. Service,
R/o at “Spaghetti” Parijat C.H.S.,
Building No. H-6, Flat No. 26, 7th Floor,
Sector 15, Kharghar – 410201,
New Mumbai.
3. IFFCO TOKIO General Insurance Company Limited,
through its Divisional Manager,
1st Floor, In front of Uday Talkies,
Above Rajasthan Bank, Tilak Road,
Akola, Tq. and District – Akola.

...RESPONDENTS

S/Shri Colin Anthony, K.H. Anandani and Bhavin Suchak, Counsel
for the appellants.

Shri D.N. Kukday, Counsel for respondent no.3.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON : FEBRUARY 22, 2024
JUDGMENT IS PRONOUNCED ON : MARCH 8, 2024

JUDGMENT :

The appeal is filed under Section 173 of the Motor Vehicles Act, 1988. The appellants met with a vehicular accident on 14/6/2015. The appellants suffered injuries. However, appellant no.1 suffered severe injuries and became permanently disabled. The treating doctor has issued disability certificate indicating 60% permanent disability. The Medical Board later on has assessed permanent disability to 75%.

2] Appellant no.1 was working as Watchman/Peon in the office of Minor Irrigation Sub-Division, Zilla Parishad, Akola. Appellant no.2 is a practicing Advocate at Akola. The offending vehicle – Maruti Swift Dezire Car bearing registration no. MH-19-AX-9267 was driven by respondent no.1. The owner of offending vehicle is/was respondent no.2 and the vehicle was insured with respondent no.3. The Tribunal formulated the following issues and answered the same accordingly for the

reasons assigned in the judgment :

<i>Sr. No.</i>	<i>Issues</i>	<i>Findings</i>
<i>1</i>	<i>Whether the claim petitioners No.1 and 2 prove that, they have sustained permanent disability due to rash and negligent driving of the driver of vehicle Maroti Desire Car bearing registration No. MH 19 AX 9267 i.e. respondent No.1 owned by respondent No.2 and insured by respondent No.3, on 14-6-2015 at about 1.15 to 1.30 p.m. on National High Way No.6, near Biyani Bagh, Murtizapur, Tq. Murtizapur, District : Akola ?</i>	<i>Partly Yes. (Claimant No.1 sustained permanent disability)</i>
<i>2</i>	<i>Whether owner, driver and insurer of motorcycle bearing No. MH 30 AP 7603 is necessary parties to the petition ?</i>	<i>No.</i>
<i>3</i>	<i>Whether claimants are entitled for compensation as prayed ? If yes, to what extent and from whom ?</i>	<i>Yes. Rs.6,70,186/- to claimant No.1 and Rs.17,000/- to claimant No.2 from respondent Nos. 1 to 3, jointly and severally.</i>
<i>4</i>	<i>What award ?</i>	<i>Petition is allowed with proportionate costs.</i>

3] The appellants examined Subhash (appellant no.1) as CW/1, Dr. Shailesh Deshmukh as CW/2, Nitin (appellant no.2) as CW/3, Dr. Vinay Virwani, Member of Medical Board in Government Hospital, Akola as CW/4 and Diwakar Tale, Junior

Clerk, Irrigation Department as CW/5. In addition, various documents were submitted to substantiate the claim.

4] The Tribunal noted that both the injured were admitted in the hospital of CW/2. He deposed that appellant no.1, aged around 58 years, was hospitalized from 14/6/2015 till 6/7/2015. He had suffered compression fracture of C-5, C-6 with fracture tibia left with compound fracture 3rd and 4th metatarsal right foot. The doctor's evidence further indicates that appellant no.1 was in follow-up with him till 31/1/2017 (Exhs. 37 to 43). His evidence further show that appellant no.1's x-ray was taken, M.R.I. was done and disability certificate (Exh. 52) was given, thereby assessing permanent disability to 60%. The doctor deposed that functional disability of appellant no.1 has increased because of no improvement in weakness of upper limbs combined with two major fractures in both the lower limbs. He (appellant no.1) required support for his routine activities.

5] So far as appellant no.2 is concerned, the doctor

stated that he has extracted x-ray of left hand shoulder. He was given treatment. A bill of Rs.7000/- was given. His fractured bone has been united.

6] In cross-examination, the doctor admitted that appellant no.1 made recovery to some extent. He denied the suggestion that appellant no.1 can do routine work as usual.

7] Dr. Vinay Virwani – CW/4 is an Orthopedic Surgeon and a Member of Medical Board in Government Hospital, Akola. He has examined appellant no.1. He was having Quadriplegia, i.e., weakness in both upper and lower limbs. There was decrease in motor and sensory of all four limbs. All equals to Quadriplegia for 75% permanent disability. He accordingly issued permanent disability certificate (Exh.60). He has further deposed that because of above disability, appellant no.1 is unable to do his daily activities such as walking, standing, wearing clothes, etc. on his own. He needs help. The doctor opined that appellant no.1 cannot recover fully from his present Quadriplegia. These injuries are permanent in nature.

8] The Tribunal has noted that two doctors have assessed two different disabilities. The treating doctor has assessed disability to the extent of 60% whereas the Member of Medical Board has assessed it to 75%. The Tribunal thought it proper to accept the opinion of treating doctor.

9] On the point of compensation, the Tribunal noted that entire medical expenses, except Rs.44,754/-, were reimbursed. As regards loss of future earning, the Tribunal noted that appellant no.1 has received his salary until retirement. Appellant no.1 claimed that post retirement, he was going to start business of fishing and could have earned more than Rs.40,000/- per month.

10] The Tribunal held that appellant no.1 is entitled to actual hospitalization charges to the tune of Rs.22,425/-. He has incurred Rs.2,40,754/- of which Rs.2,18,329/- has been paid and, therefore, he is entitled for remaining amount of Rs.22,425/-. Appellant no.1 claimed Rs.2,61,860/- towards medical leave of ten months. In addition, he was required to

take earned leave for 112 days, i.e., for 3 months and 22 days and, therefore, he sustained loss of Rs.99,395/-. Appellant no.1 has placed on record order Exh.72 passed by office showing period of medical leave from 15/8/2015 to 22/11/2015, i.e., for 100 days. The Tribunal, by taking aid of the Maharashtra Civil Services (Leave) Rules, 1981 (for short "Rules of 1981"), held that no government employee is entitled to encashment of medical leave and accordingly declined to grant compensation for Rs.2,61,860/-. As regards earned leave, the claim to the extent of Rs.97,761/- was allowed.

11] The claim of future loss has been declined on the count that appellant no.1 will get pension. Though, the claim ought not to have been declined on this count, the learned Counsel for the appellants failed to show any cogent evidence to indicate that he had any workable plan or capability to commence fishery business, post retirement. Mere statement on oath is not sufficient proof in this regard. Thus, the finding of the Tribunal is correct, though better reason as above could have been assigned.

12] The Tribunal has then considered compensation in other heads and chalked out his entitlement in following terms :

<i>Sr. No.</i>	<i>Claims</i>	<i>Amounts</i>
<i>1</i>	<i>Hospital and Medicine Bills.</i>	<i>Rs.22,425/-</i>
<i>2</i>	<i>Future medical expenses.</i>	<i>Rs.50,000/-</i>
<i>3</i>	<i>Loss of earning during the hospitalization.</i>	<i>Rs.97,761/-</i>
<i>4</i>	<i>Nutritious Diet.</i>	<i>Rs.50,000/-</i>
<i>5</i>	<i>Pain and sufferings.</i>	<i>Rs.2,00,000/-</i>
<i>6</i>	<i>Loss of amenities of life.</i>	<i>Rs.1,00,000/-</i>
<i>7</i>	<i>Conveyance, traveling and attendance Charges.</i>	<i>Rs.50,000/-</i>
<i>8</i>	<i>Loss of expectations of life.</i>	<i>Rs.1,00,000/-</i>
	<i>TOTAL</i>	<i>Rs.6,70,186/-</i>

13] Appellant no.2's claim was allowed to the extent of Rs.7,000/- towards medical treatment and Rs.10,000/- towards pain and suffering. The learned Counsel for the appellants failed to show that appellant no.2 was entitled for any additional sum.

14] An identical situation fell for consideration before

the Hon'ble Supreme Court in the case of *The New India Assurance Company Ltd. Vs. Satish Chandra Sharma & Anr.* [Civil Appeal No. 1579/2022 decided on 23/2/2022]. The respondent therein had, despite injuries, continued in government service, even after his accident and retired on superannuation. The respondent had lost out on encashment of his earned and medical leave due to the injuries suffered by him. These claims were allowed by the Motor Accident Claims Tribunal. The Tribunal denied certain allowances that were paid to him when he was in C.I.D. department, viz., intelligence allowance, special allowances and special pay allowance, etc. The respondent therein had underwent an operation and an implant had been fixed on his spine, which affected him physically.

15] His argument was that owing to the operation and related medical issues, he has been deprived of post retirement earnings. The respondent had suffered 75% permanent disability in the lower limbs. The respondent, however, admitted that he can move around but sometimes require

assistance.

16] The Supreme Court, taking into consideration that the respondent had continued to work, set aside the enhancement granted by the High Court by applying multiplier to the net salary payable to the respondent. The High Court had enhanced the amount of compensation to Rs.56,44,378/-. The Supreme Court noted that the respondent has continued to earn monthly salary he was earlier drawing. He was 56 years old at the time of sustaining injuries and had about 4 years of service left. The Supreme Court further found fault by noting that the High Court failed to notice that injury certificate did not relates to permanent disability in the entire body but was limited to the lower limbs. The Court noted that the respondent was not immobilize and could perform and undertake daily course without help and assistance. Accordingly, the Supreme Court restored the award of the Tribunal, which reads thus :

1.	<i>On account of injuries caused, pain, deprivation of amenities of life, shortening of long life, inconvenience, sadness disappointment, depression and mental and physical agony.</i>	<i>Rs.1,50,000/-</i>
2.	<i>The inconvenience due to injuries in carrying out day to day/routine work</i>	<i>Rs.1,50,000</i>
3.	<i>Special expenditure on transport</i>	<i>Rs.50,000/-</i>
4.	<i>Under Medical expenses</i>	<i>Rs.94,500/-</i>
5.	<i>Expenses on medical attendant and nutritious food during treatment in hospital.</i>	<i>Rs.9,500/-</i>
6.	<i>Amount of earned leave.</i>	<i>Rs.1,57,000/-</i>
7.	<i>For transport expenses to and fro the Hospital</i>	<i>Rs.10,000/-</i>
	<i>Total</i>	<i>Rs.6,21,000/-</i>

The Supreme Court then considered the fact that the respondent had undergone an operation and an implant had been fixed on his vertebrae causing him physical pain, discomfort and possible decrease in lifespan and that he though entitled to pension and retirement benefits, has lost the opportunity to take up post retirement employment, has enhanced the compensation by a lumpsum amount of Rs.3,79,000/- making total compensation to Rs.10,00,000/-.

17] The learned Counsel for the appellants contends that the Tribunal has not awarded fair compensation under various heads. He further submits that the claim of future loss ought to have been considered. To my mind, the answer to the arguments finds place in the judgment of the Supreme Court referred to above. In the said case, the respondent suffered 75% permanent disability, here it is 60-75%. In the said case, the amount towards medical leave and earned leave was granted. In the present case, the Tribunal has considered amount towards earned leave as permissible under the Rules of 1981. The Tribunal has declined to consider the claim of medical leave on the ground that the Rules of 1981 do not permit such claim. This finding is based on the applicable statutory Rules and, therefore, cannot be faulted with. In the case before the Supreme Court, the respondent was 56 years old, here, appellant no.1 was 58 years old. In the case before the Supreme Court, the respondent continued in service and got all benefits, so is the case here.

18] In the present case, the doctor – CW/2 deposed

that the patient may recover to some extent from the injuries. Appellant no.1 was not immobilize. He attended office, meaning thereby, that he recovered from the injuries. Nonetheless, the evidence of doctor also indicates that he will require assistance, how long is, however, not known. The Tribunal has considered these difficulties, which appellant no.1 may suffer and granted compensation under various heads, pecuniary and non-pecuniary, which appears to be reasonable.

19] In the circumstances, the purpose will be served if further compensation as granted by the Hon'ble Supreme Court is granted to appellant no.1 as well. Accordingly, an amount of Rs.3,29,814/- is granted over and above the amount of Rs.6,70,186/- granted by the Tribunal. Appellant no.1, therefore, is entitled to receive total compensation of Rs.10,00,000/- in all.

20] Appellant no.1 is, thus, entitled for further compensation of Rs.3,29,814/- along with interest @ 6% per annum from the date of filing of claim application. The amount

shall be paid by the respondents within six weeks from today.

The award of the Tribunal is modified accordingly.

21] The appeal is thus partly allowed and disposed of in
above terms with no order as to costs.

JUDGE

Sumit