



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.961 OF 2012

Santoshkumar s/o Ramprakash Warma,
Aged about 35 years,
Occupation-Driver, R/o. Pawansut
Nagar, New Dighori Naka,
Umrer Road, Nagpur.

.. Appellant
(Orig. Applicant On R A)

..Versus..

1. Shankardas s/o Bhagwandas
Nimawat, R/o. Ghorad,
Tah. Kalmeshwar, District-Nagpur.

2. United India Insurance Company
Limited, Through it's Divisional
Manager, Mount Road, Sadar,
Nagpur.

.. Respondents
(Orig. Non-Applicants on R A)

.....
Shri S.R. Charpe, Advocate for Appellant.
None for Respondent No.1 though served.
Mrs. Anita Mategaonkar, Advocate for Respondent No.2.

.....
CORAM : PRAVIN S. PATIL, J.
DATED : 18.12.2025.

JUDGMENT

1. In the present appeal, the original claimant has filed
this appeal for the enhancement of the compensation as he is

dissatisfied with the compensation awarded by claim Tribunal by its impugned judgment dated 18.8.2010 in MACP No.24/2006.

2. It is pointed out by the appellant that he has moved application under Section 163-A of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Nagpur for the accident which was took place on 8.9.2005. He has claimed the compensation of Rs.1,00,000/- in the petition. The said application was strongly opposed by the respondents including the insurance company. It was their contention that the applicant failed to demonstrate that he was the driver of the vehicle and driving the vehicle with the permission of the owner. It is further alleged that the accident took place due to own negligence of the appellant.

3. In the background of above said factual position, the appellant entered into the witness box and stated that on 8.9.2005 when he was coming to Nagpur by Truck No.MH-40/3512 as a driver, the other Truck No.NL-02/D-5301 coming from opposite direction collided with the truck resulting the

same he received injuries on his right leg and head. Immediately, he was moved to the Government Medical College and Hospital, Nagpur where his right leg was operated. He has further stated that to prove fact of occurrence of an accident he has filed the police case papers which includes the copy of FIR and spot panchanama and final report as well as particulars of the vehicle.

4. In respect of the injury, which appellant has caused, he has stated that he was treated by Dr. Shailesh Bijwe and more importantly he has stated that he lost his working capacity. For this he has relied upon the disability certificate issued by Dr. S.S. Bijwe, Government Medical College and Hospital, Nagpur stating that the appellant has caused 25% disablement.

5. In support of submission, the appellant has also examined Dr. Bijwe before the Tribunal. Dr. Bijwe, in his deposition, has stated that he has examined the appellant and referred him to Regional Limb Fitting Center for disability evaluation. According to him, the appellant has caused 25% permanent disability due to accidental injury. He has admitted

the medical certificate which is placed on record at Exh.40. The said certificate shows that the appellant caused head injury and his right leg was damaged and it is noted that there was a ligament injury with knee instability.

6. Before the Claim Tribunal, no one has been examined on the side of the respondents. They have only relied upon the cross-examination conducted by them in the matter. Accordingly, the learned Tribunal has decided the Claim Petition and thereby hold that the appellant is entitled for the compensation of Rs.32,000/- along with 7.5% interest per annum.

7. The appellant in the present appeal came with a submission that as per the settled principles of law, it is necessary to see that the work which victim doing at the time of accident and the injury caused to him in accident is directly affecting his livelihood or not. And if it is found that even injury is caused to a particular limb, then considering his functional disability compensation should be determined and awarded in the matter.

8. In the light of this submission, he has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Mohan Soni .vs. Ram Avtar Tomar and others, reported in 2012 (2) SCC 267.*** The Hon'ble Supreme Court has observed in Para 10 of the judgment as under :

10. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellants earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of

persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of appellants future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs. 3,56,400/- and after addition of a sum of Rs. 30,000/- and Rs. 15,000/- the total amount would be Rs. 4,01,400/-. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today.”

9. The learned counsel for respondent no.2-insurance company strongly opposed the present appeal. It is the contention of the respondent no.2 that at the relevant time under the provisions of Section 163-A of the Motor Vehicles Act, the limited compensation was directed to be paid to the claimants. Accordingly, the appellant has restricted his compensation at the rate of Rs.1,00,000/-. Hence, considering that aspect of the matter proportionate to the disability caused

to the appellant, the learned Tribunal has awarded the compensation in the matter. Hence, in any case, the appellant is not entitled for the enhancement of the compensation.

10. The learned counsel for the appellant has pointed out that Section 163-A of the Motor Vehicles Act is now amended by the legislature and same is substituted as Section 164 by the legislature. According to this amended provisions, now the claimant is entitled for a compensation upto Rs.5,00,000/- in case of death and Rs.2,50,000/- in case of grievous hurt. The appellant also pointed out that the Coordinate Bench of this court has already taken a view on the basis of the Judgment of the Hon'ble Supreme Court of India that this amended provision can be made applicable even to the pending cases and applicable retrospectively by considering the fact that the provisions of Motor Vehicles Act is a piece of beneficial legislature. Hence, according to him, the appellant is entitled for the enhancement of the compensation.

11. Apart from above, it is the submission of the appellant that at the time of accident the appellant was the driver of the

vehicle. This fact is not disputed in the matter. The medical certificate shows that he caused 25% disability. As he was working as a driver and medical evidence shows that he will have to face some difficulty of running or climbing etc. it necessary means, he would not be in position of driving of the vehicle also. Hence, considering the law laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar .vs. Ajay Kumar and another, reported in (2011) 1 SCC 343***, the functional disability is also required to be considered in the matter of permanent disablement.

12. In the present appeal, admittedly original application was filed under Section 163-A of the Motor Vehicles Act. The said provision is now substituted as Section 164. However, entire intention of legislature under Section 164 is same as like under section 163-A. Only amount of compensation has been enhanced. Under this provision, for grievous hurt, compensation has been determined Rs.2,50,000/-. However, "grievous hurt", is not defined under Motor Vehicles Act. Therefore, in my opinion, considering the percentage of disability caused to a particular limb, which affect his livelihood

is material factor while awarding compensation under head of “grievous hurt”. In present case, appellant was driver of vehicle, due to accident, he caused leg injury. Same was proved by him before Claim Tribunal. Respondent did not adduce any evidence to brought anything contrary on record. Therefore, in my opinion, considering evidence available on record, Appellant has 40% functional disability will be proper consideration. Accordingly, by applying multiplier 17, Appellant is entitled for compensation of Rs.2,44,800/- ($36,000 \times 17 \times 40\% = \text{Rs.}2,44,800$).

13. Hence, for the above said reasons, the present appeal deserves to be allowed in following terms :

O R D E R

(1) First Appeal is allowed.

(2) The impugned judgment and award dated 18.8.2010 passed by the Member, Motor Accident Claims Tribunal, Nagpur in Claim Petition No.24/2006 is modified to the extent that the appellant is entitled for entire compensation of Rs.2,44,800/- along with interest of 6% per annum from the date of petition till realization of amount.

(3) The respondent no.2-insurance company is directed to deposit the enhanced amount with the Registry of this Court within a period of three months.

(4) The appellant is permitted to withdraw the enhanced compensation amount.

(5) Needless to state that the amount already withdrawn by the appellant shall be deducted from the enhancement of compensation.

(Pravin S. Patil, J.)