



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1525 OF 2013

Machindra s/o Vithoba Sonawane,
Age: 50 years, Occ: Service & Agri.
R/o: Ghodegaon, Taluka Newasa,
District Ahmednagar

..Appellant
(Orig. Claimant)

Versus

1. Ambadas s/o Santram Gadakh,
Age: Major, Occ: Agri.
R/o: Sonai, Taluka Newasa,
District Ahmednagar
2. Branch Manager,
The United India Insurance Co.Ltd.
Jogeshwari Society Building,
Market Yard, Rahuri,
District Ahmednagar
3. Rajendra Shivaji Bhalerao,
Age: years, Occ: Driver,
R/o: Ghodegaon, Taluka Newasa,
District Ahmednagar
4. Branch Manager,
Oriental Insurance Co. Ltd.
Branch Shrirampur, Tq. Shrirampur,
District Ahmednagar

..Respondents
(Orig. Respondents)

...

Mrs. R. S. Bora h/f Mr. S. S. Bora, Advocate for the Appellant.
Mr. S. G. Jadhav (absent), Advocate for Respondent No.1.
Mr. S. V. Kulkarni, Advocate for Respondent No.2.
Mr. U. S. Malte, Advocate for Respondent No.4 (Through V.C.).

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.

PRONOUNCED ON : 06th MAY, 2024.

JUDGMENT:-

1. The appellant/original claimant impugns the judgment and award dated 04.02.2013 passed by the Motor Accident Claim

Tribunal, Ahmednagar in M.A.C.P. No.245/2002 and seeks enhanced compensation.

2. With the consent of the parties, matter is taken up for final hearing.

3. Mrs. Bora, learned Advocate appearing for the appellant would submit that the claimant suffered serious injuries in accident dated 26.07.2002. The claim for compensation was raised before the Tribunal under Section 166 of the Motor Vehicle Act. The Tribunal passed meagre award of Rs.8,54,770/- as against claim of Rs.16,00,000/-. She would submit that consequent to accident injuries, the claimant has suffered 60% permanent disablement. He is a teacher by profession. The evidence of Doctor clearly demonstrates that the claimant had suffered multiple injuries including dislocation of left shoulder, injury to urethral bladder with fracture to the pelvis resulting into deformity. The Doctor opined that the claimant would be facing difficulty in maintaining sexual relations with his spouse. She would further urge that due to the loss of penis, the claimant would have tremendous impact on sexual life and psychological status. However, Tribunal has not considered the aforesaid aspects while assessing the compensation. She would further submit that due to accidental injuries, movements of the claimant have been restricted and no compensation is assessed for such losses. She would, therefore, urge that the compensation needs to be adequately enhanced. In support of her contentions, she relied upon the judgment of the Supreme Court in case of ***G. Ravindranath Vs. E. Srinivas and Ors.***¹.

¹ AIR 2013 SC 2974.

4. Mr. Kulkarni, learned Advocate appearing for respondent no.2-insurer submits that the Tribunal has considered all the relevant aspects of the matter and passed just and proper award. He would submit that although the claimant has suffered permanent disablement, there is no loss of earning to him, since he continued in service as before. He would further point out that the Tribunal has awarded loss of earning for the period of hospitalization, compensation towards permanent disablement and the reimbursement of the entire medical expenses. He points out that even the Tribunal has taken care to grant compensation towards future medical expenses. As such, according to him, there is no further scope for enhancement of compensation. He would submit that this is a case of accident occurred in the year 2002. The Tribunal has assessed the compensation considering the valuation of money at the relevant time. In absence of monetary loss of future earning, the award passed by the Tribunal is just and proper and no further enhancement is required in such cases. Mr. Kulkarni, learned Advocate relies upon the judgment of the Supreme Court in case of *New India Assurance Co. Ltd. Vs. Satish Chandra Sharma and another*².

5. Having considered submissions advanced on behalf of the respective parties and on perusal of the record and proceeding received from the Tribunal, it is apparent that the claimant had suffered injuries due to motor vehicular accident. At the time of accident, he was serving as a teacher at Shaneshwar Vidya Mandir, Sonai. It is not in dispute that the claimant continued in service even after the accident and no particulars of future loss of earning are brought on record before the Tribunal. The Tribunal has, therefore, assessed compensation for non-pecuniary losses and actual expenses incurred towards medical treatment. The Tribunal

has also taken care to grant future expenses for medical treatment and transportation. In this background, it would be necessary to find out whether assessment of the compensation is just and proper looking to the overall facts and circumstances of the case.

6. It is trite that, in case of serious injuries, the claimant suffers multiple losses not only in terms of monetary form, but it has serious impact on quality of life. The law on this point is evolved under various pronouncements of the Supreme Court and this Court. In cases of ***Mrs. Helen C. Rebello and Ors. Vs. Maharashtra State Road Transport Corporation and Another***³ and ***R. D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. and Others***⁴ while considering the impact of the accidental injuries, the Supreme Court identified various heads for grant of compensation. The observations in case of ***R. D. Hattangadi*** (supra), particularly paragraph no.9 can be referred on this aspect, which reads as under:

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship,

³ (1999) 1 SCC 90.

⁴ (1995) 1 SCC 551.

discomfort, disappointment, frustration and mental stress in life.”

7. Turning back to the facts of the present case, it can be gathered from the evidence that the claimant suffered accidental injuries on 26.07.2002. Initially, he was treated at Hospital of Dr. Deshpande during the period from 26.07.2002 to 11.09.2002. He was operated for right shoulder, urethral bladder, pelvis fracture and also plastic surgery was performed on him. Thereafter, claimant was treated at High Tech Urology Institute at Pune under the supervision of Dr. Dipak V. Kirpekar during the period from 06.01.2003 to 16.01.2003. He was again admitted to the same hospital for the period from 30.10.2003 to 03.11.2003 for surgery of urethral bladder. Although, claimant appears to have been recovered from the various injuries, ultimately he suffered impotency and loss of his sexual life. The evidence of Dr. D. V. Kirpekar is recorded at Exhibit-141. He issued certificate at Exhibit-149. He states that the injury to penis cannot be corrected, since it lost sensation and due to this injury there is loss of sexual life. Although, the said witness is cross-examined on behalf of the respondents, nothing could be elicited that would dislodge the contention of the claimant.

8. The Tribunal has dealt with the evidence tendered on behalf of the claimant. The Tribunal recorded that the age of the claimant's elder son is 24 years, daughter is 22 years and younger son is 19 years. The claimant's age as on the date of accident appears to be 40 years. Taking into account the aforesaid aspects, the Tribunal assessed compensation of Rs.3,00,000/- towards permanent disablement and loss of sexual life. The Tribunal has also granted compensation towards medical expenses, loss of income during hospitalization, estimated future medical expenses

and conveyance charges to the tune of Rs.1,20,000/-. However, looking to the various heads admissible heads of compensation as stipulated in case of ***R. D. Hattangadi*** (supra), the Tribunal could have adequately assessed the compensation towards non-pecuniary damages such as mental and physical shock, pain and sufferings, amenities in life, loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress, which are important aspects of life. Although, the Tribunal has assessed the compensation of Rs.3,00,000/- towards some of losses attributable to impotency, the compensation ought to have been granted on other heads like:

- i. pain and sufferings.
- ii. transportation/conveyance.
- iii. mental shock, agony and frustration.
- iv. loss of amenities in life.
- v. attendant charges etc.

9. Although, estimation of losses on the aforesaid grounds individually would be difficult in the facts and circumstances of the present case, this Court finds that looking to the valuation of money in the year 2002, the Tribunal ought to have granted additional compensation of atleast Rs.5,00,000/-, which would be just compensation for aforesaid heads.

10. The learned Advocate appearing for the appellant relied upon the judgment in case of ***G. Ravindranath*** (supra), wherein the compensation towards various non-pecuniary losses is assessed to Rs.10,50,000/-. However, in that case, the claimant was just 19 years of age and suffered fracture of pelvic region as well as urethral rupture. In the present case, the claimant is father of three children out of marriage and his age was aged 40 years at the time of accident. Further, he continued to be in service without

any loss of earning. Taking into account the totality of circumstances of the present case, this Court deems it appropriate to grant cumulative additional compensation of Rs.5,00,000/- to the claimant towards non-pecuniary losses. Resultantly, the following order is passed:

ORDER

- a. First Appeal is partly allowed with proportionate cost.
- b. The impugned judgment and award dated 04.02.2013 passed by the Motor Accident Claim Tribunal, Ahmednagar in M.A.C.P. No.245/2002 is modified.
- c. The respondent nos.1 and 2 shall jointly and severely pay total compensation of Rs.13,54,770/- (Rs. Thirteen Lakhs Fifty Four Thousand Seven Hundred Seventy only) to the claimant alongwith interest at the rate of 6% p.a. from the date of petition i.e. 24.09.2002.
- d. The compensation amount paid/released in terms of the award passed by the Tribunal shall be appropriated.
- e. The modified award be drawn on deposit of deficit Court fee.
- f. On deposit of the enhanced compensation amount, it be released to the claimant.

(S. G. CHAPALGAONKAR)
JUDGE