

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

**FIRST APPEAL NO. 1700 OF 2012
WITH
CIVIL APPLICATION NO. 2862 OF 2019
IN
FIRST APPEAL NO. 1700 OF 2012**

Yogesh Subhash Panchal Appellant
v/s.
Mohd. Hussain Malik, Dhuni
Mohd. Malik and anr. Respondents

**WITH
FIRST APPEAL NO. 1361 OF 2010**

The Oriental Insurance Co. Ltd. Appellant
v/s.
Yogesh Subhash Panchal and anr. Respondents

Ms. Rina Kundu for the Appellant/Applicant in FA/1700/2012.
Ms. S.S. Dwivedi for the Appellant in FA/1361/2010 and
for the Respondent in FA/1700/2012.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 19th SEPTEMBER, 2022.

JUDGMENT :-

. These Appeals are directed against the judgment and award dated 20/11/2009 passed by the Member, Motor Accident Claims Tribunal, Mumbai in Claim Application No.164 of 2005. By the impugned judgment, the Claims Tribunal allowed the Claim Application under section 166 of Motor Vehicles Act filed by the

Appellant-Yogesh Panchal (hereinafter referred to as 'the claimant') and awarded compensation of Rs.48,38,543/- with interest @ 7.5% p.a. from the date of the application till final realization.

2. The brief facts necessary to decide these Appeals are as under :-

3. On 29/11/2004, the Claimant was proceeding to on his motor cycle bearing No.MH-03-AB-3180. When he reached near Sonapur bus stand, a dumper bearing No.MH-04-CA-1071 dashed against the rear side of his motor cycle. As a result, he sustained multiple injuries, resulting in 100% permanent disablement due to traumatic paraplegia. The Claimant alleged that the accident was caused due to rash and negligent driving by the driver of the dumper truck.

4. The Claimant was admitted in several hospitals and had incurred huge medical expenses. The Claimant stated that he is totally bed ridden and is dependent on others for his day to day chores. He was 26 years of age as on the date of the accident. The Claimant averred that he was in the business of metal cutting and was earning Rs.1,70,000/- per annum. He is unable to work and earn his livelihood and has lost on simple pleasures of life. The Claimant filed a petition under section 166 of M.V. Act claiming compensation of

Rs.45,00,000/-.

5. The Respondent Nos.1 and 2 did not contest the petition. The Respondent No.3 – Insurance Company sought leave under section 170 of the MV Act and filed its written statement at Exhibit – 17. The Respondent – Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondents also disputed the annual income of the deceased and denied its liability to pay the compensation.

6. The claimant examined himself and another witness Santosh Manchekar. The Respondent – Insurance Company did not adduce any evidence. Upon considering the evidence adduced by the claimant, the Tribunal recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. Relying upon the income tax returns (Exhibit – 36), the Tribunal considered the income of the claimant as Rs.1,64,986/- per annum. The Tribunal applied multiplier of 18 and upon deducting 1/3rd towards personal expenses, assessed loss of future income at Rs.19,79,832/-.

7. The Tribunal also awarded compensation of Rs.13,66,781/-

towards medical expenses, attendant charges and air fare; Rs.50,000/- towards future attendant charges and treatment; Rs.3,00,000/- towards pain and suffering; Rs.10,000/- towards special diet; Rs.3,00,000/- towards loss of amenities of life and Rs.8,24,930/- towards loss of income for five years. The Tribunal thus awarded total compensation of Rs.48,31,543/-. Being aggrieved by the quantum of compensation, the Claimant and Respondent – Insurance Company have filed these Appeals.

8. Heard Ms. Rina Kundu, learned counsel for the Claimant and Ms. S.S. Dwivedi, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The questions for consideration are that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and secondly, whether the compensation awarded by the Tribunal is just and reasonable.

10. It is well-settled that in the proceedings of Section 166 of Motor Vehicles Act, 1988 the issue of negligence has to be decided on the

basis of preponderance of probabilities and that standard of proof beyond reasonable doubt cannot be made applicable in such cases. In the instant case, it is not in dispute that on 29/11/2004, at about 13:30 hours, near Sonapur Bus stop, there was collision between the motor cycle bearing no.MH-03-AB-3180 driven by the Claimant and the offending dumper No.MH-04-CA-1701. The Claimant has deposed that his motor cycle was at a slow speed and on the correct side of the road. He claims that the dumper came from behind at an excessive speed and gave a violent dash against his motor cycle. As a result of the severe impact, he fell off the motor cycle and the wheel of the dumper ran over his body resulting in serious injuries. In his cross-examination, he has stated that he had worn a helmet and has further specified that the speed of the motorcycle was 35 to 40 km/hr. The statement of this witness, attributing negligence to the driver of the offending dumper has gone unchallenged. Furthermore, nothing has been elucidated in the cross-examination which would indicate that the accident was caused due to the rash and negligent driving of the claimant.

11. The claimant has also produced the First Information Report which indicates that crime was registered against the driver of the dumper for driving the vehicle in a rash and negligent manner and

thereby committing offences under 279 and 338 of IPC. The driver of the offending vehicle has not stepped in the witness box to explain the circumstances in which the accident was caused. The aforesaid facts and circumstances amply prove that the accident was caused due to rash and negligent driving by the driver of the offending dumper.

12. As regards the quantum of compensation, the law relating to grant of compensation in injury cases is well-settled. In ***Raj Kumar v/s. Ajay Kumar (2011) 1 SCC 343***, the Hon'ble Supreme Court has laid down the general principles relating to compensation in injury cases and has held thus :-

“4. The provision of the Motor Vehicles Act, 1988 (‘Act’ for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss

which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability. ”

13. In ***Pappu Dev Yadav v/s. Naresh Kumar AIR 2020 SC 4424***, the two questions for consideration before three Judge Bench of the

Hon'ble Supreme Court were : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. While answering both these questions in the affirmative, the Hon'ble Supreme Court after referring to and considering the previous decisions reiterated that 'just compensation' should include all elements that would go to place the victim in as near a position as he or she was in, before the occurrence of the accident. While no amount of money or other material compensation can erase the trauma, pain and suffering that the victim undergoes after a serious accident, monetary compensation in the manner known to law whereby society assures some measures of restitution to those who survive, and the victims who have to face their lives. The Apex Court has emphasized that the Court should not adopt a stereotypical or myopic approach, but instead view the matter taking into account the realities of life, both in the assessment of the disabilities and compensation under various heads. It is observed that Court should be mindful that a serious injury not only imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is

born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in Judge's mind whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts of oblivious of these circumstances, there is resultant affront of the injured victim.

14. Reverting to the facts of the case, as on the date of the accident, the Claimant was 26 years of age and he was married. The evidence on record reveals that the claimant had suffered multiple injuries viz., rib fracture with lung contusion, Grade III liver tear, injury on chest and abdomen, spinal cord injury resulting in traumatic paraplegia and consequent 100% permanent disablement.

15. It may be noted that Paraplegia, which is a form of paralysis of lower body restricts everyday routine physical activity and leads to (i)

deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on social and financial well being of the victim.

16. Paraplegia also impacts marital life of the spouse, who inevitably becomes the main care taker or care giver and in the process shared vows, friendship, intimacy and emotional support become a thing of the past. The children too do not remain untouched with this tragedy, as impaired mobility limit parenting responsibilities and results in depriving the children of guidance, love, care and affection of the parent which is essential for the development and welfare of the children. Paraplegia of the sole bread earner also puts infirm parents in a helpless situation. Monetary compensation howsoever high cannot rebuild the life of the victim or reduce his physical or mental trauma. It cannot restore the shattered dreams of the spouse, bring back lost childhood of the children or relieve the agony of the parents of seeing their child in a vegetative state.

17. Nevertheless, the provisions under the Motor Vehicles Act, which is a beneficial legislation, enables the Tribunal or the Court to provide relief to the victim or the family by awarding compensation which appears to be just. The object and endeavour is to provide much needed financial stability to the victim and the family to navigate the change with minimal trauma. The quantum of compensation has to be determined keeping in view the sufferings of the victim and his family and as held by the Supreme Court in *R.D. Hattangadi v/s. Pest Control (India) Pvt. Ltd. (1995) 1 SCC 551*, by venturing into some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused, at the same time viewing the aforesaid elements with objective standards.

18. As noted above, the Claimant was 26 years of age and had suffered multiple injuries in an accident leading to traumatic paraplegia. He was admitted in Wokhardt hospital from 29/11/2004 to 11/01/2005. He was again admitted to Wokhardt hospital from 24/01/2005 to 01/04/2005; in Parijit Nursing Home on 17/06/2005; again in Wokhardt hospital from 30/10/2005 to 04/11/2005; in BSESMG hospital from 14/11/2005 to 13/12/2005; in Hiramongi Hospital from 03/04/2006 to 05/04/2006 and in Lifeline Hospital,

Chennai for stem cell therapy from 20/06/2007 to 24/06/2007. He had undergone spinal stabilization injury.

19. The Claimant has produced the medical records of each of these hospitals which are at Exhibits – 29 to 35. He has deposed that as advised by the Doctor he has taken follow up treatment. He was examined by the Medical Board at J.J. Hospital to assess the permanent disability and as per the certificate at Exhibit – 37. The Claimant suffers from traumatic paraplegia with bladder-bowel involvement with permanent disability of 100%.

20. The Claimant has produced several medicines/hospital bills from the year 2005 to 2007, air ticket from Mumbai to Chennai for stem cell therapy, bills issued by Dr. Wadke for physiotherapy from April, 2005 to July, 2005 and the bills (Exhibit – 41) issued by the attendant – AW2, Santosh towards attendant charges. These bills, genuineness of which is not disputed, prove that the Claimant had incurred actual expenses towards medical, transport, physiotherapy and attendant charges to the tune of Rs.13,77,915/-. The Claimant is entitled for reimbursement of the said amount of Rs.13,77,915/-. In addition, the claimant is also entitled for compensation of Rs.6,000/- towards special diet while

under treatment.

21. The Claimant has deposed that he is unable to perform his daily chores and that he has engaged AW2 – Santosh Manchekar as his attendant on payment of Rs.3,000/- to Rs.4,000/- per month. The evidence of AW2 -Santosh Manchekar, reveals that he has been engaged by the Claimant as an attendant to take care of his day to day activities. He was initially paid attendant charges of Rs.3,000/- per month and subsequently increased to Rs.4,500/- per month.

22. The Claimant, who is paralyzed from waist below would require attendant throughout his life. Considering the attendant charges at Rs.4,500/- per month and adopting multiplier of 17, the Claimant is entitled for compensation of Rs.9,18,000/- towards attendant charges in future as against Rs.50,000/- awarded by the Tribunal.

23. The Claimant being paraplegic, is confined to bed. He is prone to suffer from bladder and kidney infections, pulmonary embolism, deep vein thrombosis, etc. He is likely to develop pressure ulcers and is require to sleep on water bed to avoid pressure sores. Hence, the Claimant will have to incur expenses towards purchase of water bed,

wheel chair, crutches and other miscellaneous items. The Claimant will need constant followup treatment for his physical and mental well being. Considering future medical expenses on an average of Rs.5,000/- per month and adopting multiplier method, the Claimant is entitled for compensation of Rs.10,20,000/- towards future medical expenses. The Claimant will also require physiotherapy for both the lower limbs for which he is entitled for lumpsum compensation of Rs.30,000/-. The Claimant is therefore entitled for total compensation of Rs.10,50,000/- towards future medical treatment, physiotherapy charges and other miscellaneous expenses.

24. It is well known that paraplegic patients need high protein and fiber diet, with multivitamin supplements. They also need special diet to regulate their bowel movement. Even by conservative estimation, the amount cannot be less than Rs.3,50,000/-. Therefore, sum of Rs.10,000/- awarded by the Tribunal towards special diet is enhanced to Rs.3,50,000/-.

25. As regards loss of future income, the Claimant has deposed that he was in business of metal cutting and was earning Rs.1,70,995/- per annum. The Claimant has produced income tax returns at Exhibit – 36.

The Claimant has deposed that since the accident, he is unable to run his business and earn his livelihood. The Tribunal relied upon the income tax returns at Exhibit – 36 and considered the income of the Claimant at Rs.1,70,995/- per annum. The Tribunal deducted 1/3rd towards personal expenses and applying multiplier of 18, awarded compensation of Rs.28,04,762/- towards loss of income from the date of the accident, including future loss of income.

26. It is pertinent to note that the Claimant had not produced any documentary evidence to prove that he was in metal cutting business. The income tax returns produced by the Claimant were filed subsequent to the accident. No reasons have been assigned for not producing the tax returns in respect of the previous years. In such circumstances the tribunal was not justified in relying upon the income tax returns at Exhibit-36 for the purpose of assessing the loss of earning. Similarly, the Tribunal was not justified in applying multiplier of 18. Considering the age of the claimant and the decision of the Apex Court in *Sarla Verma (Smt.) and ors. v/s. Delhi Transport Corporation and anr. (2009) 6 SCC 121*, the multiplier applicable is 17.

27. The Tribunal has also erred in deducting 1/3rd towards personal

expenses of the Claimant. In *Raj Kumar* (supra), the Hon'ble Supreme Court has held that in the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore, there is no need to deduct 1/3rd or any other percentage from the income towards the personal and living expenses.

28. The loss of earning capacity of the Claimant is 100%. The Claimant having failed to prove the actual income, the loss of future earning has to be assessed on the basis of the notional income. Considering the age of the claimant, the notional income can be considered at Rs.8,000/- per month i.e., Rs.96,000/- per annum. Considering the age of the Claimant and adding 40% towards loss of future prospects, total amount would be Rs.1,34,400/- per annum. Applying multiplier of 17, the total loss of future earnings of the Claimant works out to Rs.22,84,800/-.

29. The Claimant, a young man of 26 years of age is wheelchair bound for life. In addition to physical and mental suffering, his mobility

impairment is likely to affect his conjugal relationship and shatter his hope to nurture children. He is unable to enjoy amenities of life, which he would have otherwise enjoyed but for the tragic accidental injuries. In such circumstances, compensation of Rs.3,00,000/- awarded by the Tribunal towards pain and suffering and loss of amenities is enhanced to Rs.5,00,000/-.

30. Accordingly, the Claimant is held to be entitled for compensation of Rs.64,86,714/- which is more than the amount claimed by the Claimant. Having regard to the decision of the Hon'ble Supreme Court in *Nagappa v/s. Gurudayal Singh and ors. (2003) 2 SCC 274*, there is no embargo in awarding compensation more than that claimed by the Claimant. Rather it is obligatory for the Tribunal and Court to award 'just compensation', even if it is in the excess of the amount claimed.

31. Hence, the following order :-

(a) First Appeal No.1700/2012 is allowed.

(b) The Claimant is held to be entitled for total compensation of Rs.64,86,715/- inclusive of no fault liability. Upon excluding an amount of Rs.23,18,000/- in respect of future expenditure under different heads, the

Claimant shall be entitled for interest on amount of Rs.41,68,715/- @ 7.5% per annum from the date of the application till final realization.

(c) Respondent – Insurance Company shall deposit the balance amount within a period of four weeks from the date of uploading of the order ;

(d) 10% of the compensation deposited by the Respondent – Insurance Company with proportionate interest accrued thereon be paid to the Appellant-claimant on payment of deficit court fees, if any.

(e) The balance amount shall be invested in the name of the Appellant-claimant in any nationalized bank with liberty to withdraw quarterly interest accrued on the said amount ;

32. First Appeal No.1361/2010 is dismissed. No order as to costs.

33. Pending Civil/Interim Applications, if any, stand disposed in view of disposal of the Appeals.

(SMT. ANUJA PRABHUDESSAI, J.)