

**CORAM : BHARATI DANGRE, J.**  
**RESERVED : 22<sup>nd</sup> DECEMBER, 2021**  
**PRONOUNCED : 7<sup>th</sup> MARCH, 2022**

## JUDGMENT

1           The present Appeal is filed by the National Insurance Company Ltd, assailing the judgment passed by the Member, MACT, Baramati in MACP No. 250 of 2000 dated 6<sup>th</sup> January 2020.

The claim application filed by the claimant under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,00,000/- came to be partly allowed by the Tribunal, holding the claimant entitled for compensation of Rs. 52,63,219/- with interest of 6% p.a. from the date of application till it's realization. The driver of the offending vehicle, the owner of the said vehicle and the National Insurance Co. Ltd are held jointly and severally liable to pay the amount of compensation to the claimant.

2           Heard the learned counsel Shri Rahul Mehta i/b KMC Legal Venture for the appellant and Ms. Nandini Chittal for the respondent claimant.

Since the Appeal is sought to be argued finally by the appellant and respondent, with the necessary compilation of documents being placed on record, I have proceeded to decide

*Tilak*

the Appeal finally, since the counsel for the Insurance Company on 23<sup>rd</sup> November 2021, made it clear that the Appeal has been filed by the Insurance Company only on the quantum of compensation awarded.

3 The claim petition came to be filed by the respondent/claimant in the wake of an accident which took place on 29<sup>th</sup> June 2005, when he was riding a motor cycle on Baramati-Patas road within the area of village Karadewadi, when he was hit by a truck MH-14-V-4918, coming from the opposite side. Since the offending vehicle coming from the opposite direction hit him, and proceeded to the Eastern side, he fell from the motor cycle along with the pillion rider and sustained severe bodily injuries.

The claimant was initially admitted in the hospital of Dr. Bhoite, when treatment was offered to him and he underwent surgery. Thereafter, he was shifted to another hospital, where he was again required to undergo a surgery. The claim disclose that he was further required to be admitted in an hospital belonging to Dr. Sonawane and thereafter, he was admitted in K.E.M. hospital, Pune, where he underwent another operation. He received his further treatment in Ruby Hall Clinic, Pune and thereafter from the Orthopedic Surgeon, Dr.Kulkarni, who is located in Miraj. The claimant was aged 24 years at the time when he met with the accident and he was required to undergo a long line of treatment,

*Tilak*



which required long hospitalization and the evidence on record, reveal that he was required to be hospitalized for 400 days and this is evidenced from the discharge cards produced and by the multiple witnesses examined by the claimant. He was required to undergo multiple surgeries, which included a hip replacement surgery and was treated as a case of Hemi Orthoplasty, since he had sustained multiple fractures.

His disability was assessed by PW 10, Dr.Pankaj Jindal as 83%, vide certificate produced on record at Exhibit-129. It is the case of the claimant that even today, he is not completely recovered and suffers from a disability affecting his functional capacity at 100%, as he is unable to attend his daily routine and chores, without any assistance and is unable to pursue his work and business, which he was undertaking prior to the date of his accident.

4 In the claim petition filed by him, seeking compensation for the accident, which disabled him to the extent of 83%, he claimed an amount of Rs.1,50,00,000/-. The claim was based on the disability incurred by him resulting into loss of earning capacity and also for compensating him the amount he had spent towards his treatment, which included the expenses of transportation, medicines, special diet and attendant for him to enable him to continue with his movements. Claiming that he was a healthy and hearty person, aged 24 years and was engaged

*Tilak*



in private business as he was managing a Gas agency and also involved in the business of selling of building material and mobiles. He projected his monthly income to be Rs.40,000/- and claimed that on account of the accident, he was unable to pursue his business activities and even his future appear to be bleak on account of his restrictive movement and the disability incurred.

5 In support of his claim, he filed his evidence affidavit, accompanied with documentary evidence in form of the police papers, insurance policy, medical bills and documents relating thereto. He examined 28 witnesses to bring on record the long treatment, which he was required to undergo in various hospitals, where he underwent multiple surgeries. Apart, the witnesses also brought on record the amount incurred for undergoing various pathology test, physiotherapy, which was imperating for restoring his movements. Witness Nos. PW 13 and 14 is also examined to establish the purchase of various articles for making him movable or necessary for his smooth movements, in form of Orthopedic material. He has also examined various Chemists from whom he purchased medicine as PW 23, PW 25 and PW 28.

6 Through the several witnesses, the claimant brought on record the expenses actually incurred by him in the treatment, to treat the injuries and the disabilities sustained by him in the accident and the evidence brought on record speak of the

*Tilak*



sufferings of the claimants, when he underwent multiple surgeries and was required to be hospitalized for around 400 days, intermittently whenever the surgeries were performed and he was recuperating in the hospital.

7 The claim petition proceeded ex-parte against the driver and the owner of the vehicle but the insurance company reflected the claim by filing its written statement (Exhibit 26), in which it denied the age, occupation and income of the applicant. There is a specific denial to the claim in the petition about the amounts spent on hospitalization and medicines. The disability as alleged, was also denied.

The Insurance Company also denied the liability on the count, that the accident which had occurred, was not on account of the mistake of the driver who was driving the offending vehicle, by submitting that it was the claimant who was at fault. The claim was also contested on the ground that the driver of the offending vehicle was not holding a valid and effective driving licence, but since the learned counsel for the Insurance Company has submitted before me that the Appeal is only restricted to the quantum of compensation, I need not delve into the said aspects of the matter that the accident had occurred because of the fault of the claimant.

*Tilak*

8 On appreciation of the evidence, the documents as well as the Appeal placed before it, the Tribunal recorded a finding that the applicant sustained injuries in the motor vehicle accident which took place on 29<sup>th</sup> June 2005. The Tribunal also recorded a finding that the applicant had successfully proved that the driver of the offending vehicle drove the vehicle rashly and negligently and the accident was the result of this act and the said vehicle was insured with the insurance company.

In the wake of the affirmative finding recorded on the two counts, the Tribunal proceeded to decide the entitlement of the claim for the compensation in the application and this is the subject matter of the Appeal before me.

9 The witnesses examined by the claimant establish that he was admitted in various hospitals, as he sustained severe bodily injuries and to cure him, he was required to undergo multiple operations, as he had sustained multiple fractures and the treatment was an elaborate one which required his long hospitalization and incurred huge amount on medicines. The bills of the treatment, which include the expenses incurred on performance of surgeries, hospitalization, purchase of medicines, purchase of Orthopedic equipments necessary for the treatment of the claimant is brought before the Tribunal through various bills and reflect a whopping sum of Rs.23,05,482/-. The above sum also include the bills by various laboratory when he was

*Tilak*



required to undergo various pathological tests and the Tribunal accept that an amount of Rs.23,05,482/- is incurred in the treatment of the claimant, since the amount is exhibited through various bills.

10 In determining the amount of compensation to be payable to the claimant, the Tribunal worked out his income on the basis of the evidence placed on record by him. The claimant had pleaded that he was into the business of supply of the building material and mobiles. He was also running a Gas agency and the claimant was his earning was Rs.40,000/- per month. The Income tax return were also produced on record, which however, mention the income of the claimant from all sources to be Rs.13,600/- per month, as against what was claimed in the application to be Rs.40,000/- per month. The Tribunal, therefore, rightly relied upon the tax returns, reflecting the real income of the claimants and the annual income was accepted as Rs.93,600/- as was reflected in the Income Tax return of the financial year 2005-2006.

Considering the age of the applicant as 24, the future prospects were computed to the extent of 40% and the sum of Rs.1,31,040/- was arrived at Rs.93,600/- + Rs.37,400/-. Considering the age of the claimant, multiplier of 18 was applied and a figure of Rs.19,57,737/- was arrived at his loss of earnings, including his future prospects.

*Tilak*

The future prospects are calculated @ 40% per year and the learned counsel for the Insurance Company fairly concede that it is rightly calculated, though in the Appeal Memo, the Insurance Company claim that it ought to have calculated @ 25%.

Though it is sought to be argued that Income Tax return of the financial year 2005-06 was the sole basis for arriving at the income, Rs.93,600/- p.a. and in fact, the income ought to have been calculated by considering the tax return for atleast three years, I do not find any merit in the said submission since for a businessman, there is every possibility that he would prosper in business and unless anything contrary has been brought on record by the Insurance Company, the income reflected in the current tax return has rightly been accepted by the Tribunal as the last earned income for the year. Thus, the submission of the counsel for the appellant on this count do not warrant any attention.

11 As far as the amounts paid on hospitalization, medical, pathology and transportation, the Tribunal has awarded a sum of Rs.23,05,480/- and I do not think even this figure warrant any interference, since it is supported by the necessary documents reflecting expenses incurred by the appellant for his treatment.

*Tilak*





12 The counsel for the Insurance Company is aggrieved by award of compensation of Rs.10 lakhs under the head of 'future treatment', 'attendant', 'pain' and 'sufferings'.

The Tribunal has awarded the said amount by appreciating the evidence that have come on record to the effect that the appellant/claimant was required to undergo future treatment in connection with bipolar hemi replacement and since his case was of hip hemi orthoplasty, this would require a future treatment. The Tribunal recorded that how much is the amount which would be required to undergo such replacement, has not been placed on record, but by relying upon the decision of the Apex Court in case of *Parminder Singh vs. New India Assurance Co. Ltd. & Ors. (Civil Appeal No.5123/2019 (Arising out of SLP (Civil) No.23153 of 2018)*, claim of an amount of Rs.10 lakhs is awarded towards future medical expenses, attendant and pain and sufferings.

The award of the aforesaid amount under the said head also do not call for any interference, since it is based upon the authoritative pronouncement of the Apex Court where, in addition to the amount of loss of future earnings and granting future prospects, the amount awarded towards repeated hospitalization and medical expenses and medical treatment, to the tune of Rs.10 lakhs came to be awarded towards future medical expenses and attendant charges.

Tilak

The Apex Court while awarding the said amount made the following observations :-

“5.7 We further find that the compensation awarded to the appellant towards his medical expenses is highly insufficient. The appellant has undergone five surgeries including a surgery for a severe head injury, and three throat surgeries. The appellant has not been awarded any amount whatsoever either by the MACT or the High Court for successive hospitalization, surgeries and medical treatment. In view of the facts and circumstances of the case, it would be just and fair to award lump sum of Rs.7,50,000/- towards hospitalization and medical expenses incurred in the past by the appellant”

Looking to the debilitated state of the appellant since he was deprived of having a normal married life with the family and warranting medical assistance from time to time, being completely dependent requiring the help of an attendant throughout his life, a lump sum of Rs.10,00,000/- was awarded towards expenses and attendant charges.

13 The situation of the claimant in the present case being comparable to the above observations, on account of the multiple surgeries and repeated hospitalization, though the actual sum incurred by him, has been awarded as a compensation, future surgery in the form of bipolar hemi replacement and hemi-orthoplasty which has a limited life span, where in future, the

*Tilak*



prosthetic hip may lose some of its connection to the bone which would result in a complication and require another surgery to fix it, the amount of Rs.10 lakhs has been rightly awarded by the Tribunal. The dependency of the claimant also deserve him an attendant and since the claim of Rs.10 lakhs can arrange an attendant for him, the award of Rs.10 lakhs is perfectly justified and do not warrant interference.

14 The counsel for the claimant/respondent Ms.Nandini would submit that though the claimant has not filed any Appeal, against the inadequate amount of compensation awarded to him, though his claim was to the tune of Rs.1,50,00,000/-, the compensation is awarded in the meager sum of Rs.52,63,219/- and this require enhancement.

The said claim of the learned counsel is opposed by the counsel for the appellant but in the wake of the settled legal position, I do not have any hesitancy in accepting the submission of the learned counsel for the claimant that the Court on its motion is also empowered to enhance the compensation, if it is found that the compensation awarded is not 'just' compensation.

15 The Motor Vehicles Act is a beneficial piece of legislation and provide for some solace to a victim, who meet with an accident or to the family of the victim who is a sufferer, when the bread-earner is disabled or succumb to the said accident. The

*Tilak*

duty of the Court in granting compensation to the victim or to his family, for its survival and meet the harnes is to ensure 'just' compensation, irrespective of whether any plea in that behalf was raised by the claimant. The parameters of awarding compensation and the various heads under which the claimant is entitled for compensation are not well determined by the Constitution Bench and the Apex Court in case of National Insurance Co.Ltd Vs. Pranay Sethi, 2017(16) SCC 680, and if the compensation is not accorded, in accordance with the legal settled position by the Tribunal, it is the duty of the Court to ensure just and fair compensation.

The learned counsel for the respondent has placed reliance upon the decision of this Court in case of United India Insurance Co. Ltd and Ors vs. Kunti Binod Pandey & ors, 2020(1) BCR, 629, where a similar objection was raised in an Appeal filed by the Insurance Company, challenging the judgment and award of compensation by the MACT, holding that it is a statutory obligation of the Tribunal and the Court to do complete justice and award, 'just compensation', it has been held that by the learned Single Judge of this Court (Justice R.D. Dhanuka), that there can be no restriction to enhance compensation in appropriate case even in absence of cross-Appeal or cross-objection.

Tilak

16 In the exhaustive judgment, and by placing reliance upon the decision of the Apex Court, in case of Ranjana Prakash and ors vs. Divisional manager and Anr, Civil Appeal No.6110 of 2011 [Arising out of SLP (C) No.2057 /2011] to the following effect

“8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer”.

The learned Judge has recorded his findings in the following words :-

37. In so far as the judgment of Supreme Court in case of Ranjana Prakash & Ors. v/s. Divisional Manager and Anr. (supra) is concerned, the said judgment has been interpreted by this Court in various judgments already referred to aforesaid and after considering the later judgment of the Supreme Court, it is held by this Court that filing of substantive appeal or cross-objection by the claimant for seeking enhancement of the claims is not necessary. The principles of law laid down by the later judgment of Supreme Court and this Court in large number of judgments referred to aforesaid, apply to the facts of this case. The reliance placed by the learned counsel for the appellant on the

*Tilak*



judgment delivered by Shri Justice G.S. Patel on 29th June, 2017 in case of United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors. (supra) is misplaced. The judgment of the Supreme Court in the aforesaid judgment taking a different view, apply to the facts of this case. I am respectfully bound by the said judgment.

38. In my view, there is thus no embargo on this Court to enhance the claims not awarded by the Tribunal in favour of the original claimant. Those compensation can be awarded to grant "just compensation" in favour of the claimant to do complete justice in the matter. In my view, there is thus no substance in the submission of the learned counsel for the appellant that various judgments referred to and relied upon by the learned counsel for the respondent nos. 1 to 4 had not considered the provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908. The Division Bench of this Court in case of National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors. (supra) had considered the provisions of Order XLI Rule 33 of Code of Civil Procedure in the said judgment. (In my view, since it is the statutory obligation of the Tribunal and also the Court to do complete justice to the parties and award "just compensation", there is no restriction to enhance the compensation in appropriate case even in absence of cross-appeal or cross-objection. Appeal proceedings are in continuation of proceedings before Tribunal. In my view, claimant can be permitted to pay an additional amount of Court fees, if any on the additional compensation, allowed by the Appellate Court on the differential amount".

17 I am in complete agreement with the view expressed in Kunti Pandey (supra), since it is the duty of the Court dealing

*Tilak*

with a claimant who has incurred a disability on account of an unfateful event, I do not deem it fit to decline consideration of the claim of the claimant for enhancement of compensation in absence of any independent Appeal or cross Appeal being filed by the claimant.

18           Once this position is accepted, I must now appreciate the contention of the learned counsel for the respondent/claimant about the unjustness of the amount awarded under the impugned judgment which is challenged before me, though by the Insurance Company.

19           In Raj Kumar Vs. AjayKumar 2011(1) SCC 343, the Hon'ble Apex Court has succinctly set out the various heads for awarding compensation in cases of disability incurred due to a motor accident. The very said judgment also highlight the general principles relating to compensation in injury cases, in the following words

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

Tilak



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 v. T. Kunhikuttan Nair MANU/SC/0011/1969: AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) Ltd. MANU/SC/0146/1995 : 1995 (1) SCC 551 and Baker v. Willoughby 1970 AC 467.

The heads under which the compensation can be awarded in personal injury cases, is set out in paragraph no.5 in the following words :-

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 disability. account of permanent
- (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).

Recording that in routine personal injury cases, compensation will be awarded only under Head 1, 2-A and 4, but in serious cases of injury where there is specific medical evidence, corroboration the evidence of the claimant, that compensation will be granted under 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.

20 When a claimant suffers a disability as a result of such injuries and on ascertaining that the disability is of permanent nature, the assessment of compensation under the head of 'loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. It is expected that the mechanical formulae of calculating the loss of earning capacity depending upon the percentage of permanent disability, is not to be applied as in most of the cases, the percentage of economic loss i.e. the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.

Accepting the aforesaid principle, it can be seen that as far as the respondent claimant is concerned, the disability

*Tilak*

certificate has certified his disability to be 83% and the Tribunal has accepted his functional disability to be 83% and therefore, the loss of earning capacity to be 83%. However, if the claim of the claimant is that on 83% disability, he has incurred 100% functional disability, then it was imperative for the claimant to bring on record some evidence to that effect. Since the claimant suffer 83% physical disability in the present case, in order to establish that this amounted to 100% functional disability, none of the witnesses are examined by the claimant to prove the said aspect. The claimant has not projected his case before the Tribunal to the effect that on account of the permanent disability incurred by him, his functional disability is also 100%, which has resulted in loss of 100% earning capacity. In absence of any such specific evidence being brought on record, the submission of learned Advocate Ms.Nandini Chittal to that effect, do not deserve any consideration.

21 The Tribunal awarded an interest @ 6% p.a. from the date of application till its realization and I find substance in the submission of the learned counsel to the effect that the interest ought to have awarded @ 9% p.a., which is the appropriate rate of interest to be awarded in case of compensation to be payable for motor accidents and the Apex Court in case of *Kaushnuma Begum & ors Vs. New India Assurance Co, 2001(1) SCR 8*, has observed that 9% is the appropriate rate of interest to be awarded

Tilak



in motor accident compensation cases. Perusal of the latest decision of the Apex Court in case of Parvinder Singh (supra), the compensation is awarded with interest @ 9%.

22 In view of the above, the impugned order require a modification by directing the interest to be payable @ 9% p.a. from the date of application till its realization. The amount so calculated by re-working the interest as above, shall be treated as a part of the impugned order. The Appeal filed by the insurance company, therefore, do not warrant any interference.

23 The submission of the learned counsel for the claimant that compensation ought to have been awarded under the head (a) loss of amenities/prospects of marriage (b) loss of expectation of life, also deserve a consideration.

The claimant, barely aged 24, at the time when he met with an accident, has been struggling for his survival and overcome his disabilities and the disability incurred by him which resulted in replacement of his hip, has totally impaired his movements and function of his entire body. He may have managed to survive and with future treatments, and advancement of medical science has overcome his disability to some extent, but his fruitful years are lost, spent in and out of the hospital under a hope of overcoming the disability and restoring himself in a position of a young enterprising business person, with dreams in

*Tilak*



his eyes. No amount of compensation can bring his years back nor offer any solace for his sufferings, and but for the accident, and the injury sustained therein, he would have led a happy and healthy life. On account of the permanent disability incurred, his movements are restricted and also affected his ability to perform all that activity which, as a normal human being, he would have been able to perform. Though he may somehow manage to engage himself in some gainful activity/avocation, his life will never remain the same. The claimant is aged 24 years and was a prosperous businessman and but for the accident, he would have had an opportunity to progress further in life and like every other youth, expected much from his life which was on the right track, since he has indulged himself into a business activity. On account of the accident, he lost his dream and has become crippled and hence, deserve a compensation for loss of amenities and loss of expectation of life.

Considering the overall circumstances for grant of his claim i.e his age, income and future prospects, he is entitled for a sum of Rs.5 lakhs for loss of amenities, and Rs Five lakhs for loss of expectation of life, over and above, the compensation which has been awarded to him by the Tribunal.

24 With the aforesaid modification, in the impugned judgment, the Appeal filed by the Insurance Company is dismissed.

*Tilak*

The compensation to be worked out in light of the aforesaid directions is directed to be paid to the respondent within a period of eight weeks.

25 The MACT, Baramati, is directed to re-work the compensation due and payable to the claimant in MACP No.250/2007 and the appellant shall deposit the amount re-worked in terms of the above order within a period of eight weeks from today.

The MACT shall permit the respondent to withdraw an amount of compensation so deposited.

On failure to deposit the amount within a period of eight weeks, the claimant is entitled to seek execution of the impugned judgment in its modified form.

26 In view of the disposal of dismissal of First Appeal, pending Interim Applications do not survive and are disposed off accordingly.

**SMT. BHARATI DANGRE, J**

*Tilak*