

CNR No.
MHPU01-013535-2018

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M.A.C.P. No. 576/2018
Judgment



RECEIVED ON : 27.09.2018
REGISTERED ON : 05.10.2018
DECIDED ON : 11.08.2020
DURATION : 1Yr. 10Ms. 7Ds.

BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS
TRIBUNAL,PUNE AT PUNE.
(Presided over by P.R.Ashturkar)

MACP No. 576/2018
EXH No. 44

Mr. Saurabh Sudam Bhor
Age : 18 years, Occ : Student
R/at Kavathe Yemai,
Taluka Shirur, District Pune.**Applicant**

Versus

- 1- Mr. Naseer Nazeer Pathan
Age : Adult, Occupation : Business
R/at Gurudhanora Shendurwala,
Taluka : Gangapur,
District- Aurangabad 413001.
- 2- M/s Rreliane General Insurance
Branch Office Address :
6A, Ramabai Ambedkar road,
Sangamwadi, Pune 411001.**Opponents**

Application for Compensation u/s 166
of the Motor Vehicle Act, 1988,
Claim of Rs.40,00,000/-

Appearances:-

Advocate for Applicant : Shri. N.D. Magar
For Opponent No. 1 : Exparte
Advocate for Opponent No. 2 : Shri. S.R.Datar.

J U D G M E N T
(Delivered on this 11th day of August 2020)

1- The applicant has filed present petition for seeking compensation under section 166 of the Motor Vehicles Act, in respect of injuries sustained by him in motor vehicular accident caused on 05.10.2017.

2- Case of the applicant in short, is as under :

The accident which gave rise to this claim took place on 05.10.2017 at about 7.15 a.m. on Shirur Rajgurunagar Road, Village Ramling-Shirur, Near K.M. Marker 110/6, District Pune. At the time of incident applicant and his friend Mayur Madhukar Kachole were going to college at Shirur. Applicant was riding Hero Honda Motorcycle bearing No. MH-12-LS-8034 and Mayur was pillion rider. When they reached near the spot of occurrence, Eicher Tempo bearing No. MH-19-Z-4096 coming from opposite direction to them. The tempo driver was driving the tempo in a rash, negligent and reckless manner without following the rules and regulations of traffic. Due to dash, applicant and his friend Mayur sustained multiple grievous injuries. He also suffered 25% permanent disability and permanent disfigurement of face.

3- Police of the Shirur Police station registered offence vide Crime No. 715/2017 against driver of tempo bearing No.

MH-19-Z-4096 under various sections of Indian Penal Code and Motor Vehicles Act holding him responsible for causing accident.

4- After accident applicant was firstly admitted in Vighnaharta Multispeciality Hospital, Shirur, Pune. Thereafter, he was shifted to Sainath Hospital and Sahyadri Hospital. He was treated as indoor patient in Sahyadri Hospital from 05.10.2017 to 01.11.2017 and in Sainath Hospital from 20.12.2017 to 13.01.2018. Again in Sainath hospital he was admitted from 19.11.2019 to 21.11.2019 for removal of implants. His period of entire treatment was approximately two years. He was indoor patient for almost 55 days. There is no discharge card of Vighnaharta hospital and, therefore, it is not known as to how many days applicant was treated there as indoor patient. During the period of hospitalization and treatment, surgeries were performed and implants were fixed. The applicant incurred huge expenses. After discharge also he went to hospital for follow-up treatment.

5- The applicant was only 18 years old at the time of accident. He was taking education in F.Y.B.A. Due to accidental injuries he has suffered permanently disability and disfigurement of face. He was also unable to continue his education for almost one year. Therefore, it is lastly prayed that, claim be allowed in terms of prayer clause.

6- Opponent No. 1 was duly served vide Exh. 20. He failed to appear. Hence matter proceeded ex parte against him.

7- Opponent No.2, insurer of the offending vehicle, filed its written statement at Exh. 16. It has also denied all the averments in petition in toto. The particulars like age of applicant, income, expenditures and manner of accident are denied. According to insurance company applicant has also contributed in accident as he was driving motorcycle without driving licence. It is specifically submitted that, false and exorbitant claim is filed by applicant. With these contentions opponent No.2, prayed for dismissal of the claim against it.

8- Considering rival pleadings following issues were framed by me below Exh. 21. I have reproduced the same along with my findings thereon for the reasons given below.

Sr. No.	Issues	Findings
1	Does applicant proves that he has suffered permanent disability due to accidental injuries sustained in a motor vehicular accident, occurred on 05.10.2017 at about 7.15 a.m. on Shirur Rajgurunagar road, village Ramling-Shirur Near K. M. Market 110/6, District Pune due to rash and negligent driving of the Tata LPT 909 Truck bearing No. MH-19-Z-4096 ?	In the affirmative.

2	Whether applicant is entitled to compensation ? If yes, from whom and to what amount ?	Yes, from opponent Nos.1 and 2 jointly and severally Rs.17,33,621/-
3	What order and Award ?	As per final order.

REASONS

As to issue No.1.

9- In support of his contentions, the applicant deposed below Exh. 23. He deposed as to how accident took place. He is injured and victim. He is an eye witness. It has come on record that, the offending tempo dashed to the injured when he was going on his motorcycle. The offending vehicle came from opposite direction very speedily. It was being driven by its driver without taking any caution. It gave dash to motorcycle and he sustained multiple injuries. The Final Charge-sheet (Exh. 24) shows that, after investigation police found that, the driver of offending vehicle was driving tempo in a rash and negligent manner and while trying to overtake another vehicle, it dashed to the motorcycle of applicant.

10- During cross-examination it is brought on record that, accident took place in the middle of the road. On the basis of this admission, it is argued that, the case is of contributory negligence. It is admitted fact that, the accident took place in the middle of road. However, that does not necessarily mean that, the applicant contributed towards the

accident. The spot panchanama clearly shows as to how the offending vehicle crossed centre of road and came towards the right side of the road causing accident. It reveals that, the road near the spot of accident is 18 ft. wide. The spot of accident is 8 ft. away from the right side of the road. If the centre of road is considered as 9 ft., still the offending vehicle went 1 ft. away from the centre of road and caused accident. This must be the reason, the police, after due investigation registered an offence against the driver of offending tempo. The offending tempo not only dashed to the motorcycle of injured but the driver also flee away from the spot of the accident without caring to help the injured. All these facts are sufficient enough to hold that, the driver was rash and negligent and accident took place due to his mistake.

11- As far as injuries are concerned, medical evidence on record shows that, applicant sustained head injury as well as various grievous injuries. The police after investigation found driver of tempo negligent and, therefore, offence is also registered against him. The evidence on record thus shows that, accident took place due to rash and negligent act of the tempo driver. I, therefore, hold that applicant proves that he has suffered permanent disability due to accidental injuries sustained in a motor vehicular accident, occurred on 05.10.2017 at about 7.15 a.m. on

Shirur Rajgurunagar road, village Ramling-Shirur Near K. M. Market 110/6, District Pune due to rash and negligent driving of the Tata LPT 909 Truck bearing No. MH-19-Z-4096. Hence I answer Issue No.1 in the affirmative.

As to issue No. 2 :-

Entitlement of compensation :-

12- Admittedly, at the time of accident the injured who was driving motorcycle was below 18 years. His date of birth as per School Identity card is 21.08.2000. As such his age on the day of accident was 17 years 2 months and 16 days. Harping on this fact, it is argued on behalf of insurance company that, the injured was minor and not having valid driving licence at the time of accident. As such, he is not entitled for any compensation.

13- While dealing with this aspect it is necessary to refer Full Bench Judgment of The Hon'ble Supreme Court in **Saraswati Palariya and Others V/s New India Assurance Company Limited and others 2019 ACJ, 42.** In the case law cited supra, Hon'ble Supreme Court held that, contributory negligence on the ground that the deceased was driving the vehicle without a driving licence is unsustainable. Driving without a valid driving licence may expose the claimants to other liabilities but no inference of contributory negligence can be arrived at on that basis. In the case at hand also

same principle would apply. Now what remains to be decided is quantum of just compensation.

Quantum

14- As this is an injury claim the applicant would be entitled for compensation under various heads. Those are hereinafter discussed separately for the sake of brevity.

(a) **Hospitalization and Medical expenses :**

The applicant has specifically deposed that, after the accident he took treatment in three different hospitals. The prolonged treatment was going on for almost two years. He was treated as indoor patient for 55 days. He had undergone various surgeries including fixation and removal of implants. He also suffered facial disfigurement of forehead over the right eyebrow.

The applicant has furnished all the original bills along with list of consolidated bills at Exh. 39. As far as bills of transportation are concerned, they are not considered here as they would be considered in the separate head. Excluding the transportation bills of Rs.46,900/-, according to applicant he incurred expenses of Rs.15,94,265/-. However, in the written arguments, the opponent No. 2 brought on record certain mistakes done by the applicant during computation of bills at Exh. 39. In any case the opponent agreed that, excluding the transportation bills, the expenses incurred for

treatment are of Rs. 13,88,621/-(rounded up). The applicant has furnished all the original bills to that effect and thus applicant is entitled for Rs. 13,88,621/- under this head.

(b) **Pain and sufferings :-**

Admittedly, due to accident, applicant was treated as indoor patient in Sahyadri Hospital from 05.10.2017 to 01.11.2017. He was also admitted in Sainath Hospital from 20.12.2017 to 13.01.2018 and from 19.11.2019 to 21.11.2019. Approximately the entire period of treatment was two years and he was indoor patient for almost 55 days. Unfortunately, due to accidental injury his right leg is shortened. The injuries must have caused tremendous pain and agony to the applicant. In such situation, he is entitled for Rs.50,000/- towards pain and sufferings.

(c) **Conveyance:-**

The injured was in hospital for 55 days and during this period some one from his family must have visited to hospital every day to look after him. So also the injured had to visit hospital after discharge for follow-up treatment. In such situation, he is entitled for an amount of Rs. 25,000/- under this head.

As far as bills of transportation produced by the applicant are concerned, no any person from the said travelling agency is examined to prove those bills. So also the

criteria of original bills applied to the medical/ hospital bills cannot be applied to the so called transportation bills. Thus applicant is not entitled for the entire amount shown under the bills of transportation.

(d) **Nursing and Personal Attendance :**

The applicant already sought entire bill of hospitalization, and thus, it is not necessary to consider nursing charges separately. However, it is required to keep in mind that, during hospitalization, his family members or one of the relatives, must have accompanied him. Thus, injured is entitled for **Rs.10,000/-** under the head of personal attendance.

(e) **Special Diet :-**

The span of treatment and injuries sustained by the applicant must have required him to take restricted and special diet. Needless to say such diet is required for early recovery of the patient. Therefore, applicant is entitled for **Rs.25,000/-** towards special diet.

(f) **Loss of enjoyment of life and dis-comfort in life:-**

Due to accident, applicant sustained permanent disfigurement of face. During the course of recording of evidence, this fact is observed stating that, the injured sustained disfigurement of face at forehead over the right eyebrow. It has also come in the evidence of medical witness

that, due to surgeries after accident, the right leg of applicant is shortened. Therefore, he is limping while walking. The applicant is only 19 years old. He will have to suffer this facial disfigurement and permanent disability of leg till his last breath. The routine life of a young boy of 19 years age due to shortened limb and facial disfigurement would be miserable and a nightmare. As such applicant is entitled for Rs.75,000/- towards Loss of enjoyment of life and discomfort in life.

(g) **Permanent disability**

Admittedly, there is permanent disfigurement of face and unfortunately this fact is not brought on record during the evidence of medical witness. However, the same is recorded by the Court itself at the time of recording of evidence.

As far as permanent disability is concerned, the applicant has examined AW2, Dr. Rahul Shivaji Kesar, Orthopedic Surgeon of Sainath Hospital at Exh.33. He has produced and proved permanent disability certificate (Exh.36). The permanent disability certificate shows that, applicant sustained 25% permanent disability.

In the cross-examination an attempt is made to show that, permanent disability is assessed at higher end. However, despite mere contention nothing is brought on

record to justify the same. On the contrary, it has come on record that, despite removal of implant, the injured is neither completely cured nor disability is fully reduced.

As already discussed along with shortening of one of the limb, the applicant is also suffering from permanent disfigurement of face. The accidental injury has reduced capacity of right limb and normal functioning. The limping walk and facial disfigurement would be the fate of injured through out his life. As such the permanent disability of 25% appears to be rational and appropriate. In such situation the applicant is entitled for Rs. 25,000/- for compensation under this head.

(h) **Loss of future prospects :**

The injured was student at the time of accident. Now also he is taking education. As such for the computation purpose if his income would be considered as Rs.30,000/- per annum, it shall suffice the purpose. The multiplier of 18 would be applicable looking to the age of injured. Thus looking to 25% of disability, the entitlement would be Rs. 30,000/- X 18 X 25% = Rs. 1,35,000/-.

16- The tabular form showing entitlement of compensation under different heads is as follows.

Sr. No.	Particulars	Amount(Rs.)
(a)	Hospitalization and medical expenses	13,88,621/-
(b)	Pain and sufferings	50,000/-
(c)	Conveyance	25,000/-
(d)	Nursing and personal attendance	10,000/-
(e)	Special Diet	25,000/-
(f)	Loss of enjoyment and dis-comfort in life	75,000/-
(g)	Permanent disability	25,000/-
(h)	Loss of Future prospects	1,35,000/-
	Total Amount Rs. :	17,33,621/-

Interest :

17- As far as rate of interest is concerned, looking to the prevailing rate of interest of bank and as per judgment of Apex court, applicants would be entitled for interest at the rate of 9% p.a. from the date of application till its actual realisation.

Who shall pay :

18- Admittedly, neither opponent No.1 nor opponent No.2 adduced any evidence. The opponent No.1 is the owner of offending vehicle. The opponent No.2 is its insurer. As such opponent Nos. 1 and 2 are jointly and severally liable to pay compensation. I, therefore, answer Issue No. 2 accordingly.

19- In sequel I pass following order.

ORDER

- 1- The application is partly allowed with proportionate costs.
- 2- Opponent Nos. 1 and 2 are directed to pay jointly and severally compensation of **Rs.17,33,621/- (Rupees Seventeen Lakhs Thirty Three Thousand Six Hundred and Twenty One only)** including interim compensation awarded under section 140 of the Motor Vehicles Act to the applicant.
- 3- Out of Rs.17,33,621/-, an amount of Rs. 5,00,000/- be kept in Fixed Deposit Receipt for the period of Five years in the name of applicant in any nationalised bank of his choice and rest of the amount be paid to him by issuing account payee cheque, on due verification.
- 4- Opponent Nos. 1 and 2 shall pay compensation amount along with interest at the rate of 9% per annum from the date of petition, till realization of entire amount within 30 days of passing of order.
- 5- Applicant is directed to pay deficit court fees, if any, within one month.
- 6- Award be drawn up accordingly.

Pune
Date : 11.08.2020

(P.R.Ashturkar)
Member,
Motor Accident Claims Tribunal
Pune.

CERTIFICATE

I affirms that, the contents of the P. D. F. file order are same word to word as per original order.

Court Name : Shri.P.R.Ashturkar,
Member, M.A.C.T.
& District Judge-17, Pune.

Name of Steno : Smt.S.V.Hirve

Date of order : 11.08.2020

Order signed by P. O. on : 11.08.2020

Date of PDF & Order uploaded on : 11.08.2020