Presented on : 25.08.2016
Registered on : 06.09.2016
Decided on : 08.08.2024
Duration : **7Y, 11M, 14D**

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI

APPLICATION No.1546 OF 2016
(Presided Over by M. A. Kothari, Member, CR.No.7)

Exh.

Master Sairaj Bapusaheb Khandagale
Aged about 10 years, minor applicant
through his father Mr. Bapusaheb Bhagwan
Khandagale as natural guardian and
next friend

At present residing at :
Room No.231, M.S. Building No.7,
Near Jama Sweets,
Chembur Colony,
Mumbai-400 074. ... **Applicant**

V/s.

Mr. Sachin Sahebrao Pawar
having his address at :
13, Shramik CHS,
Behind SumanNagar,
Chembur, Mumbai-71. ... **Opp. Party**
(Owner of the vehicle No.MH-04-DW-7660)

And

Bajaj Allianz General Insurance Co. Ltd.
having their office :
Rustomji Aspire Building,
3rd floor, Eastern Express Highway,
Sion-Chunabhatti,
Mumbai-400 022. ... **Insurer**

Mr. J.S. Salunke, Advocate for Applicant
Opposite party – absent.
Mr. V. Parshurami, Advocate for Insurer

JUDGMENT
(Delivered on 8th August, 2024)

On account of suffering permanent disability in road vehicular mishap, the applicant has filed petition for compensation u/s.166 of the Motor Vehicle Act through his next friend.

2. The facts giving rise to this application, in brief, are as under:-

On 22.6.2016 at about 12:30 p.m. the minor applicant was walking by the side of the road. When he reached opposite S.R.A. Ekta CHS, Ambedkar nagar, Chembur, Mumbai one Motor Car bearing No.MH-04-DW-7660 came in rash and negligent manner without blowing horn had given dash to the minor. Due to dash the minor applicant fell and sustained injuries and was admitted in Suvarna Sethia Hospital, Chembur till 27.6.2016. Chunabhatti Police station registered offence vide Cr.No.153/2016. At the time of accident the applicant was 10 years old was a student. Therefore, the present application through the next friend for compensation is filed.

3. The Opposite party was served vide paper publication Ex.13 but failed to file appearance therefore matter proceeded exparte against him.

4. On the other hand Insurance company filed its

written statement Ex.16 in which they have taken the defence that the driver of the said offending car was not holding a valid and effective driving licence and therefore the insurance company is not liable to pay the compensation for the breach of the terms and conditions. It is also contended that the applicant himself was negligent and therefore for that reason had prayed for rejecting the claim.

5. Considering the rival pleadings my learned predecessor framed issues at Exh.18 against which I have recorded finding with reasons to follow as under :-

Sr.No.	Issues	Finding
1	Whether the applicant proves that he sustained injuries in motor vehicular accident occurred on dated 22/06/2016, due to rash and negligent driving by the driver of Motor Car bearing No.MH-04-DW-7660?	Yes
2	Whether the Insurer proves that the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident ?	No
3	Whether the applicant is entitled for compensation ? If yes, what amount and from whom ?	Yes, as per final order

Reasons

6. Heard counsel for the applicant and Insurer. In order to prove the case the applicant has examined his next friend AW1 Bapu Saheb at Ex.20, AW2 Sudhagar, Official

from their hospital at Ex.32, AW3 Dr. Naresh Khanna to prove the disability. Thereafter the applicant closed their side by filing pursis Ex.41. On the other hand the Insurance company examined the driver of the vehicle DW1 Sachin at Ex.47 but they failed to examine him and therefore that evidence was filed. Later on the side of Insurance was closed by passing order below Ex.1.

7. The counsel for the applicant has placed written notes of argument Ex.50 in addition to the oral argument. Likewise the counsel for the Insurance company submitted the written notes of argument Ex.51 and placed reliance on following authorities :

1) **Narayan Kalangutkar and Anr. V/s. New India Insurance Co. Ltd. reported in 2012(2) Mh.LJ 803** which is on the point that it is for the claimant to prove the rash and negligent act and then only the owner and the insurance company will be held liable to pay the compensation. In the case cited there were two vehicles involved and the death was caused in the said dash.

2) **Divisional Commissioner KSRTC V/s. Mahadeva Shetty & Anr. Reported in (2003) 7 SCC 197**. In this case the bus in which the passengers were travelling plunged into a pit from a great height and had sustained injuries. The facts of the present case are totally different with the case of the applicant.

3) **Sayeed Bashir Ahmed & Ors. V/s. Mohd. Jamil & Anr. Reported in (2009)2 SCC 225.** This case law is based

on just compensation U/s.168 of the Act. In this case the lorry had given dash to one Luna and had killed the deceased.

As to Issue No.1

8. In the present case the next friend of the applicant has examined himself in which he deposed as per the application. In the evidence of this witness it has come on record that operation/surgery were performed i.e. TENS nailing for right tibia fracture ankle wound debridement was done. For the medical he made expenses for Rs.74,891/-. This witness also described the nature of disabilities sustained by the applicant after the accident as the minor is undergoing pain, suffering and hardship for the rest of his life as he will not be able to squat and walk and stand for long time. He cannot perform like other children. In all he made expenses of Rs.1,69,431/- towards the medical expenses. Due to the accident he was not able to continue his service for 1 year and had made other expenses and sustained loss of Rs.72,000/-.

9. This witness was cross examined by the Insurance in which it has come on record that he was working at City Survey Office, Malad as a Maintenance Surveyor. Now he is working as a Record Keeper at Mulund Office. He also admitted that at the time of accident he was not present and is deposing on the basis of the information received from the eye witnesses. No

receipt is placed on record to show that attendant was engaged to look after the minor applicant.

10. In the evidence of AW2 Sudhagar, the discharge card Ex.25, Ex.26 and other medical papers are proved. The bills worth Rs.55,000/- Ex.35, Rs.42,916/- Ex.36, Rs.51,624/- Ex.38 total amounting to Rs.1,49,540/- were proved. In the cross examination he deposed that all the papers were prepared under his supervision and he is deposing on the basis of the record of the hospital.

11. AW3 Dr. Naresh was examined to prove the disability in which he assessed the disability to the extent of 41% vide certificate Ex.40. During cross examination it has come on record that no x-ray was taken for making said analysis and no record of the examination is placed on record.

12. In the present case on the perusal of the cross examination taken by the Insurance, the evidence of AW1 Bapu Saheb on the point of accident, sustaining injuries by the minor applicant, the disability and the involvement of the vehicle which was driven in rash and negligent manner was not denied or suggested. No material cross examination has been taken therefore the evidence of the applicant on the point of rash and negligent driving by the driver of the offending vehicle in which the applicant sustained fracture injuries which were treated by

performing surgeries goes unchallenged. Thus, the applicant proved the rash and negligent act resulted in causing said accident by the driver of the offending vehicle and therefore I record my finding on Issue No.1 in the affirmative.

<u>As to Issue No.2</u>

13. Though the Insurance company has taken the defence regarding the driver of the offending vehicle was not having a valid driving licence, no witness examined by the Insurance company to prove the said defence. Also they have taken the defence regarding the negligence of the minor applicant. In this regard they have placed affidavit of the driver of the offending vehicle but later on they failed to call upon him to prove the contents of the affidavit. Therefore, both the defence taken by the insurance company for want of evidence could not be proved on record. Therefore I record my finding on Issue No.2 in the negative.

<u>As to Issue No.3</u>

14. It is the admitted fact on record that the minor applicant was student aged 10 years at the time of accident. Therefore, there is no question of proving the earning capacity. Moreover, in the evidence of AW1 Bapu Saheb it has come on record that due to sustaining said injuries the minor applicant is not in a position to walk or run as the other normal boys can do and he is having continuous pain

and suffering. This evidence of AW1 Bapu Saheb is corroborated by AW3 Dr. Naresh Khanna who has assessed the disability to the extent of 41%.

15. Therefore, for calculating the compensation to be awarded to the applicant the principle laid down in the case laws filed by the Insurance company, the facts are totally different from the present case and therefore the principles laid down in the case laws cited will not be applicable.

16. The applicant has examined and proved the doctor who has assessed the disability to the extent of 41%. considering the age of the minor at the time of accident and the evidence of his next friend in which he has brought on record the incapacity of the minor applicant in discharging his day to day duties and for want of the effective cross examination, the said evidence goes unchallenged.

17. As held by the Hon'ble Apex Court in the case of **Master Mallikarjun V/s. Divisional Manager, National Insurance Co. Ltd.** reported in CIVIL APPEAL NO.7139 OF 2013 (arising out of S.L.P.(Civil) No. 1676 of 2012] decided on 26.08.2013, in para no.12 has given the amount of compensation to be payable with respect to the percentage of disability as "We are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be

allowed, if the disability is above 10% and upto 30% to the whole body Rs.3 lakhs, upto 60% Rs.4 lakhs, upto 90% Rs.5 lakhs and above 90% it should be Rs.6 lakhs."

18. In the aforesaid case law the minor applicant has sustained the disability of 41% to his right foot. Therefore, considering the nature of disability sustained by the minor applicant he is entitled for compensation of **Rs.4,00,000/-** towards pain and suffering already undergone and to be suffered in future and loss of amenities on account of partial permanent disability. The applicant has also proved medical bills of **Rs.1,49,540/-**. Therefore, the applicant is entitled for the said medical expenses along with **Rs.50,000/-** for removal of implant and for future treatment. The applicant is also entitled for special diet and conveyance charges of **Rs.15,000/- each.** The applicant is entitled for **Rs.1,00,000/-** for loss of future marriage prospects. Therefore, the applicant is entitled for total compensation of **Rs.7,29,540/-.**

19. Considering the total facts and the quantum of compensation awarded coupled with the fact of prevailing rate of interest given by all the nationalized banks, in my view, the rate of interest @ 7% p.a. would be just and reasonable. Accordingly, the same is granted. Therefore in answer to issue No.3, I pass the following order :-

ORDER

1. Application is allowed with costs.

2. The opposite party and insurer are jointly and severally liable to pay an amount of **Rs.7,29,540/- (Rupees Seven Lakhs Twenty Nine Thousand Five Hundred Forty Only)** inclusive of NFL amount, if any, to the applicant along with interest @ 7% p.a. from the date of application till its realisation.

3. The opposite party/Insurer are directed to deposit the award sum to the credit of the bank account of this Tribunal directly by NEFT/RTGS mode. The details of the bank account of this Tribunal are as under:-

Account Name	MOTOR ACCIDENT CLAIMS TRIBUNAL MUMBAI
Account No.	000000407774823566
IFS Code.	SBIN0030002
MICR Code.	400002273

4. Apportionment order is as under :
   - 50% of compensation amount along with accrued interest be invested in the FDR of nationalised bank in the name of the applicant for the period of 3 years.
   - Balance 50% of the amount along with accrued interest be paid to the applicant on **production of proof of age of majority.**

5. On deposit of said amount, Accounts Officer shall

disburse the said amount as per apportionment order by way of RTGS/NEFT to the Bank Account of the claimant on submitting his bank account passbook, photocopies duly verified by his banker against proper identification by following the procedure of Law and Rules

6. Award be drawn up accordingly.

MANISH ARUN KOTHARI Digitally signed by MANISH ARUN KOTHARI Date: 2024.08.17 16:29:06 +0530

(Manish A. Kothari)
Member, CR-7,
MACT, MUMBAI

Date : 08.08.2024
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