



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 FIRST APPEAL NO. 3112 OF 2013

Shrawan Bhagwan Sonawane

... Appellant
(Org. Claimant)

VERSUS

1. Mukesh Atmaram Jadhav
Age Major, Occ. Transport,
R/o Kusumbe, Tal. & Dist. Dhule
2. The National Insurance Co. Ltd.,
The Branch Manager,
Maharana Pratap Chowk, Dhule.

... Respondents

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Mr. S. S. Patil, Advocate for the Appellant.
Mr. S. R. Bobade, Advocate for Respondent No.2.

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CORAM : ROHIT W. JOSHI, J.
DATE : 04 SEPTEMBER 2026

JUDGMENT:

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the Original Claim petitioner in Motor Accident Claim Petition No.284 of 2004, which came to be decided by the learned Member, Motor Accident Claims Tribunal, Dhule, vide judgment and order dated 25 August 2014 in order to seek enhancement of the compensation awarded by the learned Tribunal. The learned Tribunal has awarded compensation of Rs.1,73,800/- to the appellant, Rs.45,000/- towards disability suffered, Rs.1,01,800/- towards reimbursement of

medical expenses, Rs.12,990/- towards purchase of medicine and medical expenses, Rs.5,000/- towards pain and suffering, Rs.6,000/- towards loss of income during the period of hospitalization and Rs.3,000/- towards special diet.

2. The appellant met with a road accident on 27/9/2002 at about 6.30 p.m. while he was riding a motorcycle as a pillion rider, which was hit by the offending vehicle owned by respondent No.1. The offending vehicle was insured with the respondent No.2 at the relevant time. The appellant is an agriculturist. On account of the injuries suffered, he sustained fractures on the lumber joint, legs and right ankle. The appellant was discharged from the hospital on 18/11/2002.

3. He preferred a claim petition under Section 166 of the Motor Vehicles Act, which came to be registered as Motor Accident Claim Petition No.284 of 2003. The respondent – insurance company filed its written statement opposing the claim and disputing all the facts stated in the claim petition. Based on the rival pleadings, issues were framed by the learned Tribunal. The appellant examined himself, Dr. Gautam Shah and Dr. Nikhil Shah, and also examined two pharماسists, namely, Mr. Imran Ansari and Mr. Dinesh Shah, in support of his case. The appellant deposed that on account of the injuries suffered in the accident, his right leg was shortened and that he was not fit to perform his work. He also

stated that he has lost vision in his left eye. Dr. Gautam Shah, who had performed the surgery on the appellant, stated in his deposition that the appellant had recovered from ailment after the treatment. The disability certificate issued by the Civil Surgeon shows 50% disability. Dr. Nikhil Shah has deposed on the facts pertaining to admission of the appellant in the hospital on the date of accident.

4. On appreciation of the evidence, the learned Tribunal has held that the appellant was an agriculturist and having regard to the nature of work to be performed by a farmer, it cannot be said that he had suffered total loss of earning capacity. The learned Tribunal opined that since there was no evidence on record to ascertain the income of the appellant, a notional income of Rs. 3,000/- could be taken into consideration for computing the compensation. It was held that the appellant was 73 years of age as on the date of the accident. Accordingly, the learned Tribunal has awarded fixed compensation of Rs.45,000/- on account of disability suffered by the appellant. In addition, compensation was awarded towards medical expenses, medical expenditure, medicines, pain and suffering, hospitalization.

5. The learned advocate for the appellant argued that the correct age of appellant was 62 years, as is recorded in the treatment papers. He contended that age of 73 years was wrongly recorded in the medical

paper of the year 2004, when the appellant had visited the doctor for follow-up treatment. The learned advocate also contended that the learned Tribunal has erred in awarding compensation of Rs.45,000/-, which was inadequate. Apart from this, it is contended that appropriate enhancement ought to be granted to the appellant under the head of pain and suffering.

6. *Per contra*, the learned advocate for the respondent – Insurance Company contended that since the Civil Surgeon who has issued the disability certificate was not examined, the disability certificate could not be relied upon. The learned advocate contended that there was no evidence on record to arrive at conclusion regarding the permanent disability suffered by the appellant. It is further contended that the documents placed on record by the appellant himself indicated that the correct age of appellant was 73 years as on the date of accident. The learned advocate therefore submits that the appeal deserves to be dismissed.

7. Upon hearing the rival submissions, the following points arises for consideration in the present appeal (i) Has the learned Tribunal correctly assessed the amount of compensation payable to the appellant by treating his age as 73 years and his loss of earning capacity by 50%?

8. The appellant has stated in his examination-in-chief that his age

was 64 years as on the date of recording of deposition. The deposition was recorded in the year 2011. The examination-in-chief is not on affidavit but recorded by the learned Tribunal. The initial medical documents dated 27/9/2002 and the discharge card dated 18/11/2002 records the age of the appellant as 62 years. Thereafter, the appellant had met the doctor for follow-up treatment on 28/09/2004, wherein his age was recorded as 73 years. Apart from this, no evidence was produced on record to prove the age of the appellant. It appears from the cross-examination that the age of the appellant was challenged during the course of cross-examination. The appellant was therefore aware that his age was seriously disputed and that it was necessary for him to produce evidence on record to prove his age. Despite being put to notice during cross-examination that his age was seriously disputed, the appellant did not produce any evidence on record.

9. Although the initial medical papers of the year 2002 indicate the age of the appellant as 62 years, the said documents cannot be treated as documents of proof of date of birth or age. The burden of proving his age was on the appellant. Since the appellant failed to bring appropriate material on record in order to prove his age, this Court does not intend to interfere with the finding recorded by the learned Tribunal treating the age of the appellant as 73 years. It would be appropriate to take the age of the appellant as 73 years.

10. Although the Civil Surgeon who issued the disability certificate is not examined, the appellant had examined treating doctor to prove the nature of the injuries suffered during the accident. The nature of the injuries is not seriously in dispute. The appellant was 73 years of age on the date of which he was injured in road accident. He is an agriculturist. He has suffered three major fracture injuries. The leg in which injuries are suffered is shortened in length. He was hospitalized for treatment for a period of around two months. Having regard to the nature of the injuries, as well as the occupation and the age of the appellant, it must be held that he suffered 100% loss of earning capacity. The learned Tribunal has erred in restricting the amount of compensation on account of loss of earning capacity to the tune of Rs.45,000/-

11. The learned Tribunal has rightly considered the notional income of the appellant, who was an agriculturist, as Rs.3,000/- per month. Having regard to the age of the appellant, a multiplier of 5 would be the appropriate multiplier. In view of the aforesaid, the compensation payable to the appellant is determined at Rs.1,80,000/- (Rs.36,000/- x 5 = Rs.1,80,000/-) as against Rs.45,000/- awarded by the learned Tribunal. Having regard to the nature of injuries suffered, in the considered opinion of this Court, the learned Tribunal should have awarded Rs.20,000/- towards pain and suffering, as against Rs.5,000/- awarded by the Court. The amount of compensation towards pain and

suffering is enhanced by Rs.14,000/-. In addition to this, an additional amount of Rs.15,000/- is awarded towards future treatment, having regard to the nature of the injuries suffered. Compensation awarded against other heads is proper. Accordingly, the total amount of compensation awarded by the learned Tribunal is enhanced by an amount of Rs.65,000/-. In the result, the appeal is partly allowed in the following terms:

- (i) The judgment and award dated 17/10/2011 passed by the learned Member, Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No.284 of 2003 is modified by enhancing the amount of compensation awarded by a sum of Rs.1,65,000/-, over and above compensation of Rs.1,73,800/- awarded by the learned Tribunal.
- (ii) The respondent Nos.1 and 2 will be jointly and severally liable to pay additional compensation of Rs.1,65,000/-, as determined by this Court, along with interest at the rate of 6% per annum from the date of filing of the Claim Petition i.e., 28/4/2003, till realization.
- (iii) Parties to bear own cost in appeal.

[ROHIT W. JOSHI, J.]