

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 339 OF 1999

Satishkumar s/o Babulal Agrawal,
Age : 40 years, Occu. Service,
R/o Chandanwadi, 96, Shani Peth,
Jalgaon

APPELLANT

VERSUS

1. Santosh Sahebrao Patil,
Age : 21 years, Occu. Driver,
R/o Mundane, Tq. Parola,
District Jalgaon
2. Agarchand Shankarlal Jain,
Age : Major, Occu. Agriculture
and Trade, R/o Karmad Khurd,
Tq. Parola, District Jalgaon
3. Branch Manager,
National Insurance Co. Ltd.,
Raja Pratap Chowk, Dhule

RESPONDENTS

Mr. Arun V. Rakh, Advocate holding for
Mr. G.V. Wani, Advocate for the appellant
None for respondents No. 1 and 2 though served
Mr. V.N. Upadhye, Advocate for respondent No. 3

CORAM : M.T. JOSHI, J.
DATE : 13/01/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the direction to pay lesser

compensation than claimed in a petition under section 166 of the Motor Vehicles Act, the present appeal is preferred by the original petitioner/claimant.

3. The facts would show that on 25th April, 1997, when the present appellant was going by a bicycle from Dana Bazar, Jalgaon to Panjarapol, a Tata 407-vehicle bearing registration No. MH-18/A-7619 came from behind and gave dash to the present appellant. The respondent No. 1 Santosh is the driver of the said Tata vehicle. The respondent No. 2 is the owner of the vehicle involved in the accident while the respondent No. 3 is the insurer of the said vehicle.

. Therefore, alleging that accident has occurred due to sole rash and negligent driving of the vehicle by respondent No. 1 Santosh, the present appellant claimed compensation of Rs. Two lacs on all counts.

4. On the point of compensation, the appellant claimed that he was 31 years old at the time of accident. He was working as a Sales Manager with a wholesale grain business firm, namely, M/s Mansukhlal Oghabhai, Jalgaon prior to the accident and was drawing salary of Rs. 2500/- per month. However, since in the

said accident, he suffered serious injuries on his right wrist, right thigh, stomach and on head, he was not able to carry the field work of visiting the outstation as a Sales Manager. Therefore, his salary was also reduced. He has incurred heavy medical expenses to the extent of Rs. 58,000/- and therefore, the compensation of Rs. Two lacs was claimed.

. The driver as well as the owner of the vehicle involved in the accident did not appear and contest the proceedings. The present respondent No. 3 – insurer, however, denied all the adverse allegations and pleaded that there was contributory negligence of the claimant/petitioner and it wanted that the claim petition be dismissed.

5. In view of non-challenge to the finding of fact that the vehicle driver was solely rash and negligent in driving the vehicle, the only issue raised in the petition of contributory negligence will have to be examined.

6. The learned counsel for the appellant submitted that the appellant who was, in active life, working as

Sales Manager and was carrying field work, has suffered serious injuries. Therefore, the grant of only 25,000/- towards the future loss of income of the appellant as against the proved fact that his salary was reduced to Rs. 1700/- from Rs. 2500/- per month due to the loss of field work, ought to have been considered by the learned Member of Motor Accident Claims Tribunal. He further submitted that except the medical expenses, no other compensation is granted on the head of non-pecuniary damages also. He, therefore, submitted that the compensation of Rs. Two lacs be granted.

7. Mr. V.N. Upadhye, learned counsel for the respondent No. 3 – insurer opposed the submissions made on behalf of the appellant. He submitted that the learned Member of M.A.C. Tribunal has taken a reasonable view and therefore, the appeal be dismissed.

8. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination:-

(I) Whether the compensation granted by the learned Member of the Motor Accident Claims Tribunal is just ?

(II) What order ?

My finding to the above Point No. (I) is in negative. The appeal is, therefore, partly allowed, for the reasons to follow :

R E A S O N S

9. Before the learned Member of the Motor Accident Claims Tribunal, the appellant has placed medical bills on record at Exhibit-26 to Exhibit-31, which were for Rs. 36,262/-. The learned Member, therefore, granted compensation of Rs. 37,000/- towards medical expenditure.

10. The appellant/petitioner has pleaded that he was carrying the field work. He was getting travelling allowance of Rs. 150/- per day, in addition to his salary of Rs. 2500/- per month. The receipt of the travelling allowance was not filed and the learned

Member has not considered the said plea put forth by the appellant.

11. PW2 Bharatkumar is the employer of the appellant. He deposed that earlier, he used to pay monthly salary to the appellant at the rate of Rs. 2500/- per month. Lateron, however, as the job of the appellant became restricted, his salary was reduced to Rs. 1700/- per month. To substantiate his oral testimony, PW2 Bharatkumar had also placed reliance on the account books of his firm which were placed on record. The learned Member has, therefore, held that the appellant has suffered loss of Rs. 800/- per month i.e. Rs. 9600/- per annum towards the future loss of income and the compensation of Rs. 25,000/- was granted.

12. Upon hearing both sides, in my view, when the appellant/petitioner was 31 years old at the time of accident, was engaged in the field work as a Sales Manager and there was loss of Rs. 9600/- per annum, grant of compensation towards the loss of income at Rs. 25,000/- only i.e. for a period of two years and six months, was wrong.

13. The injury certificate placed on record at Exhibit-26 proved that the appellant has suffered a comminuted fracture to his left femur, a simple fracture to the pubic joint and certain other injuries. The Medical Officer of General Hospital, Jalgaon has issued permanent disability certificate (Exh-27) which would show that the appellant has suffered permanent disability to the extent of 15% due to the injuries suffered by him. The appellant was 31 years old at the time of occurrence. In the circumstances, it can very well be gathered that due to the disablement, the appellant would not have been able to carry the field work in future. In that view of the matter, the additional amount of Rs. 30,000/- towards the future loss of income of the appellant would be just and sufficient. In the result, the following order:-

14. The appeal is partly allowed with proportionate costs. The respondents No. 1 to 3 are hereby directed to pay jointly and severally the additional compensation of Rs. 30,000/- (rupees thirty thousand) with interest at the rate of 6% per annum on the additional

compensation now granted, from the date of filing of the present first appeal i.e. 18th January, 1999 till the realization of the amount, with proportionate costs. The appeal is accordingly disposed of.

[M.T. JOSHI]
JUDGE

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