IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 1248 OF 2004

Navnath s/o. Shankar Kale,
Age 20 years, Occu. Education,
R/o. Khori Galli, Latur,
Tq. & Dist. Latur. **....Appellant.**
(Ori. Claimant)

Versus

1. Kaka Raosaheb Mohite,
Age major, Occu. Agril.,
R/o. Raiwadi, Tq. Latur.

2. The New India Assurance Co. Ltd.
Branch at Latur,
through its Branch Manager. **....Respondents.**
(Ori. Respondents)

Mr. S.S. Manale, Advocate for appellant.

Mr. S.G. Chapalgaonkar, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2015.

JUDGMENT :

1) The appeal is filed to challenge the judgment and award of Claim Petition No. 49/2000, which was pending before the Claims Tribunal, Latur. The Tribunal has partly allowed the Claim Petition filed under section 166 of the Motor Vehicle Act and the decision is challenged on the point of quantum. Heard both the sides.

2) It is the case of claimant that in the accident, he sustained fracture injury to shaft femur left and there is

shortening of leg and due to that, there is permanent disability to the extent of 17%. At the relevant time, the claimant was aged about 14 years and he was receiving education. He had claimed compensation as there was loss of earning capacity and he has lost prospects, to make career due to injuries sustained in the accident. He examined himself and he produced record like injury certificate and disability certificate. No evidence in rebuttal was given. As the medical record was not disputed, it was exhibited as 37 and 39. The disability certificate was issued by Orthopedic Surgeon of General Hospital, Latur.

3) The Tribunal held that the amount of Rs. 10,000/- can be granted under the head of permanent disability, the amount of Rs. 5,000/- can be granted under the head of amount spent on medicines, the amount of Rs. 5,000/- can be given under the head of injury and the amount of Rs. 5,000/- can be given under the head of pain and suffering. The amount of Rs. 5,000/- was given as compensation in respect of the period which was lost for education and thus, the total amount of Rs. 30,000/- was given when there is injury of aforesaid nature.

4) The learned counsel for the claimant submitted that no compensation was calculated under the head of loss of future income and sufficient compensation was not given under the

head permanent disability. There is force in this submission. The boy, aged about 14 years sustained injury of aforesaid nature in the accident of 1999. He was studying in 7th standard and he gave substantive evidence that due to injury, he was unable to do the hard work. There is shortening of limb by 2 c.m. and so, it can be said that there must be some limp in his walk.

5) As the accident took place in the year 1999, this Court holds that the Tribunal ought to have presumed the notional income as Rs. 3,000/- per month. It could have been easily presumed that earning capacity is lost up to 17%. Fifteen could have been adopted as multiplier for calculation of loss of earning capacity and the amount of Rs. 76,500/- could have been given under the head of loss of future income. Even under the Schedule prepared under section 163-A of Motor Vehicle Act, the income was given as Rs. 15,000/- p.a. in the year 1994 and so, it was possible to infer that the notional income was Rs. 3,000/- per month. Under the head of permanent disability the amount of atleast Rs. 15,000/- could have been given. Under the head of amount spent on medicines, attendance, conveyance the amount of Rs. 15,000/- could have been given and the amount of Rs. 5,000/- could have been given under the head of pain and suffering. Thus, the minimum amount of Rs. 1,11,500/-

could have been granted by the Tribunal.

6) The learned counsel for Insurance Company submitted that Rs. 15,000/- per month could have been accepted as notional income and accordingly, compensation could have been granted. This submission is not at all acceptable. He placed reliance on the case reported as **2011 (2) Mh.L.J. 569 [Raj Kumar Vs. Ajay Kumar and Anr.].** The facts and circumstances of each and every case are always different. There cannot be dispute over the proposition made that the Schedule given under the Act can be used for calculating loss of future earning. In that case, some guess work was done and compensation was ascertained as it was old matter, the matter of 1991. The present matter is of 1999 and so, this Court has accordingly presumed the notional income. On this point, the learned counsel for appellant placed reliance on the cases reported **2013 AIR SCW 2747 [Kum. Michael V. Regional Manager, Oriental Insurance Co. Ltd. and Anr.], 2013 STPL (LE) 47916 SC [Kishan Gopal & Anr. Vs. Lala and Ors.]** and **2013 AIR SCW 6452 [Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and Anr.].** In the last case, the Apex Court has given some guidelines for granting compensation. If these guidelines are

accepted much more compensation can be granted, was the submission of the learned counsel for the appellant. The accident in that case had taken place in the year 2006. In the present matter the accident took place in the year 1999. In view of the facts and circumstances of the present case, the aforesaid compensation calculated by this Court is just and sufficient compensation for the present matter. In the result, following order is made.

O R D E R

1. The appeal is allowed. The judgment and award of the Tribunal is modified to make the compensation as Rs. 1,11,500/- on the principle of fault, which is inclusive of the amount of Rs. 25,000/- which must have been paid on principle of no fault. Interest will be payable at the rate of 9% p.a. The interest on the remaining amount will be payable after deducting the amount of Rs. 25,000/- from the date of petition till the date of reliazation. However, the interest will not be payable on the other amount of Rs. 5,000/- which is deposited after decision of petition by the Insurance Company from the date of deposit of that amount. Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

ssc/