IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1179/2004

Vilas s/o Laxmanrao Rudrawar,
age 35 yrs., occu.nil,
r/o Kari Tq.Dharur Dist.Beed.
...Appellant..
(Org.claimant)

Versus

1] Gowardhan s/o Janardhan Jadhav,
age 40 yrs., occu.Jeep Owner,
r/o Dharur Tq.Dharur Dist.Beed.

2] The Oriental Insurance Co.Ltd.,
through its Branch Manager,
Subhash Road, Beed. Dist.Beed.
...Respondents...

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Shri S.G. Chapalgaonkar, Advocate for appellant.
Shri P.B. Kadam, Advocate h/f Shri S.J. Salunke, Advocate for respondent no.1.
Respondent no.2 served.

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CORAM: T.V. NALAWADE, J.

DATE: 21.11.2015

ORAL JUDGMENT :

1] The appeal is filed against the judgment and award of Claim Petition No.292/2000 (Old No.161/2000) which was pending before the Claims Tribunal, Ambajogai Dist.Beed. The claim was filed for compensation of Rs.3,00,000/- in respect of loss of one leg in Motor Vehicle Accident. The Tribunal awarded compensation of Rs.1,27,000/- on the principle of fault u/s 166 of the Motor Vehicle Act, 1988. Original claimant has challenged the decision.

2] Heard learned counsel for the appellant – claimant and the learned counsel for the respondent no.1 – owner of the offending vehicle. Notice of the present proceeding was duly served on the Insurance Company – respondent no.2, but nobody turned up.

3] It is the case of the appellant that he lost his right leg in the accident and due to amputation of the right leg, he is suffering from permanent disability, which is to the extent of 70%. It is his case that in the past, he was earning Rs.3,000/- per month by running a grocery shop in his village Kari and due to the injury, he cannot do anything. He had contended that he is entitled to get compensation on various grounds like loss of future income, amount spent on medical treatment, compensation under the head of 'loss of enjoyment of life' and other heads.

4] Both – the owner as well as the Insurance Company contested the matter. The fact of the accident was not disputed by the owner. As only the claimant has come in appeal, there is no need to discuss the other contentions and the contentions only with regard to the quantum of compensation need to be considered.

5] The claimant has given evidence that due to the accident, he lost his right leg, which was virtually crushed. His evidence shows that he was admitted in S.R.T.R., M.C. & H., Ambejogai hospital and he was an indoor patient for 16 to 20 days. He has given evidence that he then received private treatment at Majalgaon and he was under treatment for about two years. He has given evidence that in the past, he was running a grocery shop in village Kari and his monthly income was around Rs.3,000/-. He has given evidence that he cannot do any work due to loss of leg as he cannot move for doing such business.

6] M.L.C. prepared by the Government hospital is at Exhibit 31 and it is consistent with the aforesaid evidence. There was a crush injury to right lower leg above ankle and it was involving tibia fibula lower 1/3rd. There is a disability certificate at Exhibit 32 prepared by the Government hospital and it shows that his right leg below knee was amputed and due to that, according to Government hospital, there is permanent disability to the extent of 70%. This record was not disputed and so the doctor was not examined.

7] The Tribunal has presumed that the monthly income of the claimant was hardly Rs.2,000/-. In view of age of the claimant, which was 38 years, the Tribunal held that there can be loss of income from business for at the most five years and accordingly the compensation was calculated as Rs.1,20,000/-. The amount of Rs.2,000/- was granted on the count of amount spent on attendance and the amount of Rs.5,000/- was only granted on the ground of loss of enjoyment, pain and suffering due to aforesaid injury.

8] Learned counsel for the appellant – claimant submitted that due to the aforesaid injury, the earning capacity of the claimant is affected and the loss of income could not have been restricted only for a period of five years. He further submitted that the Tribunal committed error in presuming that the loss of income per month was Rs.2,000/- and that was the only income from grocery shop. He submitted that when the claimant lost one leg, which was right leg, the Tribunal ought to have granted more amount of compensation under the head of 'permanent disability', 'loss of enjoyment of life'. He submitted that nothing is given under the head of amount spent on treatment and medicines and conveyance when the injury is of aforesaid nature. Learned counsel for the appellant submitted that further complications are developed and now the claimant is advised to go for another amputation and for that also, he will be required to spend. For production of the record to make out the case of further development, Civil Application No.3746/2014 is filed and this record is consistent with the case. Learned counsel submitted that due to further amputation, there will be no question of using Jaipur foot and the things have aggravated.

9] The aforesaid reasoning given by the Tribunal shows that proper approach was not there for calculation of the compensation under the head of 'future loss of income'. The accident took place in the year 1999 and in that year, the Tribunal could have presumed that the monthly income from grocery shop was atleast Rs.3,000/-. Such a businessman will be required to appoint atleast one Assistant to help him in the shop and also to help him in purchasing material from wholesale market. In view of the nature of injury, it can be easily inferred that the earning capacity has come down atleast by 50%. Thus, there is loss of atleast Rs.1500/- per month. Considering the age of the claimant, which was 38 years on the date of the accident, 15 could have been used as a multiplier for calculation of future loss of income. Thus, the future loss of income comes to Rs.2,70,000/- (1500 x 12 x 15).

10] Learned counsel for the appellant placed reliance on the case *Neerupam Mohan Mathur v. New India Assurance Co*. reported at **2013 AIR SCW 4820** and submitted that for permanent disability, as non-pecuniary damages, the amount of Rs.1,00,000/- can be given and amounts can be given under different heads like 'loss of expectation of life' and 'loss of amenities of life' as given by the Apex Court in the reported case. In the reported case, the accident had taken place in the year 1987 and the occupation of the claimant was different like Product Design Engineer in M/s Utility Engineers (India) Ltd. The facts and circumstances of each and every case always different. In the present case, this Court holds that the amount of Rs.25,000/- can be given under the head of 'permanent disability' for loss of enjoyment of life and the amount of Rs.15,000/- needs to be given under the head of amount spent on treatment and medicines and other counts. The total amount of compensation comes to Rs.3,10,000/-.

11] In the result, the appeal is allowed. The judgment and award of the Tribunal is modified as under:-

The claim petition is allowed with costs. The respondent nos.1 and 2 do jointly and severally deposit with the Tribunal amount of Rs.3,10,000/- as compensation on the principle of fault. This amount is inclusive of the amount already awarded u/s 140 of the Motor Vehicle Act, 1988. The interest is to be paid on the remaining amount at the rate of 9% p.a. and the interest will be payable from the date of the institution of the petition till the date of realization of the amount. The claimant is to deposit the Court fees which is in respect of Rs.10,000/-, which is the excess amount awarded by this Court and only after that, disbursement of the amount is to be made. Award be prepared accordingly.

(T.V. NALAWADE, J.)