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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.56/2007

Kachru Laxman Wagh,
age 35 yrs., occu.business,
r/o Radhaswami Colony,
Jatwada, Aurangabad.

...Appellant..
(Org.claimant)

Versus

1] Dilip Kisanrao Patil,
age 30 yrs., occu.business,
r/o Plot No.16, Shahanurwadi,
Aurangabad.

2] Oriental Insurance Company Ltd.,
(Through its Authorised Signatory)
Inder Prakash, Adalat Road,
Aurangabad.

...Respondents...

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Shri A.P. Khedkar, Advocate for appellant.

Respondent no.1 served through paper publication.

Shri V.C. Patil, Advocate h/f Shri S.M. Godsay, Advocate
for respondent no.2.

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CORAM: M.T. JOSHI, J.

DATE: 10.02.2015

ORAL JUDGMENT:

1] Heard both the sides.

2] Aggrieved by the direction to pay lesser

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compensation than claimed by the present applicant in a Motor Accident Claim Petition, the present appeal is preferred.

3] Necessary relevant facts to decide the present appeal are as under:-

a] That in the said accident, the present appellant has suffered fracture to his right tibia fibula. He was admitted to Marathwada Medical and Research Institute at Aurangabad. He was treated there. The evidence on record shows that due to the treatment and due to the bed rest, he could not join the duty for seven months. According to him, he was serving as an Assistant Accounts Officer with Divekar Auto Agencies at Aurangabad for a salary of Rs.4,000/- per month. The learned Member, therefore, granted compensation of Rs.28,000/- on this count.

b] As regards the medical expenses, the learned Member had taken into consideration the receipts at Exhibits 46 to 98. Out of those, Exhibits 49 and 50 are barely some chits wherein certain notes are made. Similarly, Exhibit 94 did not bear the license number or sales tax number of the concerned

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medical store. The same, therefore, were not considered. The total of the remaining bills was taken into consideration and an amount of Rs.19,850/- was awarded on this count. Towards the pain and suffering, an amount of Rs.5,000/- was awarded. No amount was awarded towards loss of amenities or future loss of income as according to the appellant, after the accident, he was unable to carry out the work and, therefore, has become unemployed. He has examined his earlier employer in this regard.

4] The learned counsel for the appellant submits that the learned Member ought to have granted compensation towards the loss of amenities as well as future loss of earnings, which has been deposed to by the employer in the witness box. The learned counsel further submits that even the rate of interest awarded on the compensation of Rs.52,850/- at the rate of 7.5% is on the lesser side. On the other hand, the learned counsel for the insurer – respondent no.2 submits that the evidence on record would show that the fracture was healed. It was to the right tibia and fibula, which could not have

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prevented the appellant from carrying out the job of Assistant Accounts Officer with the Auto Agency. He submits that false permanent disability certificates were placed on record and, therefore, the learned Member rightly disbelieved them and no amount towards the loss of amenities was, therefore, granted.

5] On the basis of this material, following point arises for my determination and my finding thereon is as under:-

POINT	FINDING
Whether the award of the learned Member represents just compensation ?	For the reasons to follow, partly in the negative. The appeal is, therefore, partly allowed.

6] It is true that the present appellant has filed on record two permanent disability certificates, which showed that while in the year 2002, he was suffering from 14% permanent disability. In the year 2004, the said permanent disability was enhanced to 32% permanent disability. Two different doctors had issued those certificates and both of them were examined. The learned Member, therefore, disbelieved the evidence and did not

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grant any compensation on the head of "loss of amenities".

7] It should be noted that the record proved that the right tibia and fibula of the present appellant was fractured. The learned Member has accepted the case of the appellant that he was confined to the bed for a period of four months. He was around 30 years old. In that view of the matter, certain amount towards the loss of amenities ought to have been granted.

8] Considering all the evidence on record and age of the present appellant, in my view, an amount of Rs.50,000/- towards the loss of amenities would be just and sufficient as the appellant was very young at that time.

8] As regards the future loss of earnings, it is clear from the record itself that the appellant was working as an Assistant Accounts Officer with the Auto Agency. He had suffered fracture to his one of the legs. This could not have prevented him from joining the services. His employer, however, deposed that the appellant was unable to work. This deposition cannot be accepted for the reason that the job of Assistant Account Officer does not

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involve any physical strain or any physical activities. In that view of the matter, refusal of the learned Member to grant any compensation on this head was proper.

9] As regards the rate of interest, it should be noted that the accident had occurred in the year 1999. Considering the trend of economy at that time, interest at the rate of 10% p.a. ought to have been allowed by the learned Member.

10] In the result, the appeal is hereby partly allowed with proportionate costs. The respondent nos.1 & 2 are directed to additionally pay jointly and severally an additional compensation of Rs.50,000/- (rupees fifty thousands only) with interest at the rate of 10% p.a. from the date of filing of the appeal till the realization of the same. Additionally, the respondent nos.1 & 2 are directed to pay interest at the rate of 10% p.a. from the date of filing of the application in the Tribunal on 1.1.2002 till the amount is already deposited by the respondent no.2 in the office of the Tribunal.

(M.T. JOSHI, J.)