

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1909 OF 2014

Santosh Nanasaheb Laul,
Age : 26 Years, Occu. : Driver & Agril.
R/o Patoda, Tq. Patoda,
Dist. Beed.

.. Appellant

Versus

1. Lalchand Bhimrao Kumawat,
Age : Major, Occu. : Indica car owner,
R/o Shahunagar Beed,
Tq. & Dist. Beed.
2. Hanuman S/o Pralhad Mohalkar,
Age : Major, Occu. : Driver,
R/o Naigaon, Tq. Patoda,
Dist. Beed.

(The respondent No. 2 is deleted)

3. Bharti Axa General Insurance
Company Ltd.,
Through Branch Manager,
Branch Office, Showroom No. 9,
Millennium Star Building, Near
Rubby Hall Clinic, Dhole Patil
Road, Pune, Tq. & Dist. Pune.

.. Respondents

Shri Mohit R. Deshmukh, Advocate for the Appellant.
Shri H. V. Tungar, Advocate for the Respondent No. 1.
The Respondent No. 2 is deleted.
Shri S. S. Patil, Advocate for the Respondent No. 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 10TH SEPTEMBER, 2015.

ORAL JUDGMENT :

. The present appellant had filed application for compensation U/Sec. 166 of the Motor Vehicles Act, on account of the permanent disablement suffered by the appellant in an accident. The same is partly allowed. The claimant has file present appeal for enhancement of compensation.

2. Mr. Deshmukh, the learned counsel submits that, though the physical permanent disability is 40% the Tribunal ought to have considered 100% functional disability. The claimant would not be in a position to drive the non transport vehicle which he was driving prior to accident. Even the doctor's evidence substantiates the said fact. According to the learned counsel now the claimant can only drive a light motor vehicle. The learned counsel further submits that, the appellant was involved in three avocations i. e. 1) driving of transport vehicle, 2) he had ten cows and was selling milk and 3) was also involved in agricultural operations. In fact, all these avocations have to be considered while considering the loss of income. However, the Tribunal has committed an error in considering the notional income as Rs. 4,500/- only. In fact, the appellant was getting Rs. 6,000/- by way of salary while working as a driver. The income towards the sell of milk and agriculture has not at all been considered while

computing the loss of income. The learned counsel further submits that, the age of the appellant at the time of accident was 24 years. As such the multiplier of 18 ought to have been applied. The tribunal has applied multiplier of 17 only. The learned counsel further submits that, medical bills of Rs. 1,67,000/- are produced on record. However towards the medical expenses the tribunal has awarded only Rs. 99,994/-. There was no reason in not awarding the total amount when the doctor has also said that, in addition to the medical bills and lab expenses the appellant may have incurred Rs. 1,30,000/- more towards hospitalization. According to the learned counsel, even no amount is awarded towards non pecuniary damages, such as under the head of permanent disability so also under head of pains and sufferings and loss of enjoyment of life. The learned counsel relies on the judgment of the Apex Court in the case of **Subulaxmi V/s. M. D. Tamil Nadu State Transport Corporation and another** reported in **2012 AIR SCW 5945** and in the case of **S. Manickam V/s Metropolitan Transport Corporation Ltd.** reported in **AIR 2013 SC 2629**.

3. Mr. Patil, the learned counsel for the respondent No. 3 submits that, though the appellant has stated about carrying of three avocations, there is no evidence in that regard. No independent witness has been examined. In absence of proof, the

Tribunal instead of considering the income of Rs. 3,000/- per month notionally, income of Rs. 4,500/- has been considered. Medical expenses have been properly awarded. The learned counsel submits that, in the judgments relied by the appellant of the Apex Court, the legs were amputated. In the present case, it is a case of fracture of wrist and toe. As such no amounts are payable in that regard.

4. I have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that, the appellant has suffered 40% permanent disability. The learned counsel for the appellant fairly submitted that, the appellant has renewed his non transport license. However is unable to perform his job as a driver of a transport vehicle. In view of that, the appellant would be in a position to prosecute his avocation as a driver in respect of a light motor vehicle, certainly it would not be a case of 100% functional disability. The disability is 40% which is rightly considered. There is no proof of the actual income earned by the appellant. The Tribunal has considered Rs. 4,500/- as notional income which is just, legal and proper. The multiplier applied is 17 however for a victim aged 24 years, the multiplier would be 18. Considering the same loss of earning, considering the disability would come to Rs. 3,88,800/-. As far as medical expenses are concerned, the bills are on record totaling to Rs. 1,67,870/-. From the judgment it is not clear as to how the

Tribunal has only come to the conclusion to award Rs. 99,994/- towards medical expenses. The doctor has been examined, who has also substantiated the hospitalization of the appellant. When the bills are on record regarding hospitalization advance amount paid, so also bills for medicines etc. all these bills ought to have been considered as the same are medical expenses. As such the claimant would be entitled for Rs. 1,67,870/- towards medical expenses.

5. No amount has been awarded towards the pains and sufferings. In the present case also it appears that, one toe has been amputated and there is a fracture of wrist and tibia fracture on right side at proximal third wherein plates are inserted. Naturally some amount is required to be awarded towards pains and sufferings. I would award Rs. 75,000/- towards pains and sufferings and Rs. 50,000/- towards loss of amenity and enjoyment of life. As such the claimant would be entitled for total compensation of Rs. 6,81,670/-. In the result I pass the following order.

6. The impugned judgment and award is modified. The claimant is held entitled for an amount of Rs. 6,81,670/-. The respondent Nos. 1, 2 and 3 shall jointly and severally pay an amount of Rs. 6,81,670/- to the appellant/claimant along with interest at the rate of 6% per annum from the date of application

till realization. The amount already paid shall be adjusted as on the date said payment is made. The first appeal is partly allowed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15