

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1569 OF 2010

Gangadhar Namdeo Varad,
Age : 37 years, Occu.: Labour,
R/o.: Khokalewadi, Tal. Gangakhed,
District Parbhani .. Appellant

VERSUS

1. Balaji Kishanrao Mundhe,
Age : 37 years, Occu.: Business,
R/o.: Wadwani, Tal. Gangakhed,
Dist. Parbhani
2. The United India Insurance Company,
Through its Branch Manager,
Parbhani, Tal. Parbhani,
Dist. Parbhani .. Respondents

Mr. G.S. Rane, Advocate for the appellant
Mr. M.B. Sandanshiv, Advocate for respondent no. 1
Mr. V.R. Mundada, Advocate for respondent no. 2

CORAM : M.T. JOSHI, J.
DATE : 05/02/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the lesser compensation granted in a Motor Accident Claims Petition, the original petitioner is before this Court.

3. In view of the limited challenge, we are not required to go into the details of the manner of the accident or liability to pay the compensation. The issue is only regarding the quantum of compensation.

4. The discharge card at Exhibit-38 as proved by Dr. Jagdish G. Agroya would show that the present appellant's age was 32 years. He suffered compound fracture tibia fibula coupled with fracture to radius. He has also suffered posterior cruciate tear and postero-lateral instability to the right knee joint. In the circumstances, it was found that imbalance was present and despite the operation, the appellant was unable to walk. The discharge summary would further show that radius nailing was done. Further, lat-candyle fixation and capsular repair was also done to the radius. PW-2 Dr. Jagdish Agroya deposed that he has charged an amount of Rs. 35,300/- towards the operation and other operational charges, which are proved at Exhibit-39. He issued the disability certificate at Exhibit-40, which shows that the present appellant had become 55% permanent disabled due to the

foot drop to the right side and ligaments rupture with lateral popliteal nerve palsy to right side, in view of the other injuries, as detailed supra.

5. The reading of the award of the learned Member would show that the learned Member has awarded a lumpsum amount of Rs. 1,30,000/- towards the loss of income holding the monthly income of the appellant at Rs. 1800/- per month. Additionally, an amount of Rs. 35,300/- was granted towards the medical expenses. On non-pecuniary head, an amount of Rs. 5000/- was granted for pains and suffering and thus, the total compensation of Rs. 1,70,000/- was granted.

6. Mr. G.S. Rane, learned counsel for the appellant submits that the appellant was 35 years old at the time of accident and as an agricultural labour, was earning Rs. 1800/- per month. In the nature of the injuries and permanent disability suffered by the present appellant, as detailed supra, at least 55% permanent occupational disability ought to have been accepted by the learned Member. He further submitted that no compensation towards the purchase of the

medicines, attendant's charges, etc. were granted. In the circumstances, Mr. Rane submitted that the compensation be enhanced.

7. Mr. V.R. Mundada, learned counsel for the respondent No.2-insurer, however, opposed the plea. He submitted that the just compensation has been arrived at by the learned Member.

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

"Whether the learned Member of Motor Accident Claims Tribunal has granted the just compensation to the present appellant ?"

My finding to the above point is in the negative. The appeal is, therefore, partly allowed, for the reasons to follow:-

R E A S O N S

9. The detailed description of the discharge summary alongwith the injuries suffered by the present appellant, made by this Court hereinabove, would show that the 55% permanent disability of the present appellant, he being in the manual work, is also 55% occupational disability. The appellant was 35 years old at the time of accident. Thus, the multiplier of 16 would be applicable in his case. In the circumstances, the loss of dependency would come as follows :

(I) Monthly Wages	-	Rs. 1,800/-
(II) Yearly Income (Rs. 1800 x 12 months)	-	Rs. 21,600/-
(III) Yearly Income x Multiplier - (Rs. 21,600 x 16)	-	Rs. 3,45,600/-
(IV) Total loss of dependency Rs. 3,45,600 x 55/100 (i.e. for 55% permanent occupational disability)	-	Rs. 1,90,080/- -----

10. Towards the medical treatment, an amount of Rs. 35,300/-, as calculated by the learned Member of the Tribunal is correct. However, considering the fact that some of the medical bills were already filed in the nature of the injuries suffered by the appellant and the treatment given to him for 36 days, an amount of Rs.

25,000/- towards the medicines, attendant's charges, would be just and sufficient, in addition to the said amount of Rs. 35,300/-. In the circumstances, the just compensation would come to Rs. 2,55,380/- (i.e. Rs. 1,90,080/- towards loss of dependency + Rs. 35,300/- towards medical treatment expenses + Rs. 25,000/- towards purchase of medicines + Rs. 5000/- towards pains and sufferings.

. The learned Member has granted interest at the rate of 6% per annum from the date of application till realization of the amount. Same rate of interest shall be applicable on the enhanced compensation from the date of filing of the present first appeal till the realization of the amount. In the circumstances, the following order:-

11. The appeal is partly allowed with proportionate costs. The respondents No. 1 and 2 are directed to jointly and severally pay to the present appellant total compensation of Rs. 2,55,380/- minus Rs. 1,70,000/- inclusive of amount towards no fault liability, already granted by the learned Member of the M.A.C. Tribunal, with interest at the rate of 6% per annum on the

enhanced amount of compensation from the date of filing of the present appeal.

. The respondents No. 1 and 2 are directed to pay to the present appellant the amount of compensation now enhanced within a period of 90 days from the date of present judgement. In default, the enhanced amount of compensation would carry interest at the rate of 9% per annum.

. The present appeal accordingly stands disposed of.

[M.T. JOSHI]
JUDGE

npj/fa-1569-2010