

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

First Appeal No. 2247 of 2013

Khuddus Mainoddin Shaikh,

Age : 21 years,

Occupation : Nil,

R/o. Near Water Tank,

Mailoor Mohalla,

Bidar, District : Bidar (Karnataka).

.. Appellant

(Original applicant)

versus

1. Ajeet Baburao Karanjkar,

Age : Major,

Occupation : Business,

R/o. Datta Nagar, Kallam,

District : Osmanabad.

2. Branch Manager,

The New India Assurance Co. Ltd.,

Chandranagar, Latur.

3. Farooq s/o. Dastagir Momin,

Age : Major,

Occupation : Business,

R/o. Chapoli, Taluka : Chakur,

District : Latur.

4. Branch Manager,

The National Insurance Co. Ltd.,

Hanuman Chowk, Latur.

.. Respondents

(Original respondents)

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Mr. R.P. Adgaonkar, Advocate, for the appellant.

Mrs. M.A. Kulkarni, Advocate, for respondent no.1.

Mr. A.G. Kanade, Advocate, for respondent no.2.

Mr. S.B. Madde, Advocate, for respondent no.3.

Mr. A.B. Gatne, Advocate, for respondent no.4.

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CORAM : A.M. BADAR, J.

**Date of reserving the
judgment : 17th November 2015.**

**Date of pronouncing the
judgment : 20th November 2015.**

JUDGMENT :

1. Admit. By consent of the learned Counsel for the parties, heard finally.

2. This is an appeal by injured claimant for enhancement of compensation awarded by the learned Member of the Motor Accident Claims Tribunal, Latur, vide judgment and order dated 31st December 2010, in M.A.C.P. No. 322 of 2008, filed by him.

3. Brief facts leading to the institution of present proceedings can be summarized thus :-

(a) Claimant Khuddus was travelling in a travel bus bearing registration No. MH-24/A-3941 from Ahmedpur to Latur on 5-7-2007. That bus was owned by respondent no.3 and insured with respondent no.4. Near village Kolpa, a tanker having registration No. MH-23/1521 came from opposite side and dashed the travel bus. According to the claimant, this accident has caused fracture injury to his left tibia fibula and he suffered permanent

disability. According to the claimant, he was doing the work as meson and earning Rs. 150/- per day. However, due to permanent disability suffered by him, he is unable to do the said work and he is not even able to walk properly. Hence, the claimant prayed for awarding compensation of Rs. 9,99,000/-, but restricted his claim at Rs. 1,50,000/-.

(b) Owners of respective vehicles have chosen not to file written statement, but insurers of both the vehicles i.e. respondent nos.2 and 4 filed the written statement and contested the claim mainly by contending that drivers of the vehicle insured by them were not driving the vehicle rashly or negligently.

(c) In order to prove his claim, claimant examined himself and placed reliance on Police papers as well as papers of his medical treatment. He also examined Dr. Sudhakar Gulve as witness No.2 in order to prove permanent disability suffered by him. In rebuttal, respondents have chosen not to examine any witnesses.

4. After hearing the parties, by the impugned judgment and order, the learned Member of the Motor Accident Claims Tribunal, Latur, was pleased to award compensation of Rs. 1,29,500/- with 6 % interest per annum to the claimant. Feeling aggrieved thereby, the claimant has preferred the instant appeal.

5. Heard the learned Counsel appearing for the appellant - original claimant. He vehemently argued that the learned Tribunal erred in assessing daily wages of the claimant at Rs. 60/- per day. The learned Tribunal erred in considering permanent disability at 32 % though the

Doctor examined by the claimant has certified it to be 34 %. The learned Counsel for the appellant further argued that the Tribunal erred in not awarding any amount towards medical expenses as well as for permanent disability. In submission of the learned Counsel for the appellant, loss of future income is incorrectly assessed by the learned Tribunal by considering income of the claimant at Rs. 60/- per day and applying multiplier of 18, though the claimant suffered 100 % functional disability. The learned Counsel for the appellant has placed reliance on the judgment of Hon'ble Apex Court in the case of **S. Manickam Vs. Metropolitan Transport Corp. Ltd.**, reported in **2013 (4) Bom.C.R. 528**, and contended that compensation can be payable both for loss of earning as well as disability suffered by the claimant. By placing reliance on the judgment of Hon'ble Apex Court in the case of **Sri Ramachandrappa Vs. The Manager, Royal Sundaram**, reported in **2011 AIR(SC) 2951**, he submitted that even income of Coolie can be considered at Rs. 4,500/- per month.

6. As against this, the learned Counsel appearing for respondents supported the impugned judgment by arguing that no proper and cogent evidence was adduced by the claimant in order to prove his income. They further argued that the claimant had taken medical treatment from Government Hospital and as such, had not incurred any expenses for his medical treatment. According to the learned Counsel for respondents, the Tribunal had correctly assessed compensation and, therefore, appeal deserves to be dismissed.

7. With the assistance of the learned Counsel for the parties, I have carefully perused record and proceedings including evidence adduced on record. Undisputedly, because of accident caused by collusion of travel

bus and the tanker, claimant Khuddus has suffered injuries.

8. Perusal of the impugned award passed by the learned Tribunal goes to show that a finding was recorded that the claimant has suffered 32 % permanent disability and an amount of Rs. 1,24,416/- was assessed towards loss of future income by estimating monthly income of the claimant at Rs. 1,800/-, annual income at Rs. 21,600/- and applying multiplier of 18 by considering age of the claimant as 19 years. In other words, the learned Tribunal has failed to assess effect of the permanent disability on actual earning capacity of the claimant. The learned Member of the Tribunal has ignored relevant aspect while assessing the compensation. No efforts were taken to find out whether the claimant is totally disabled from earning any kind of livelihood or whether with the permanent disability, the claimant could still effectively carry on the activities and functions which he was earlier carrying on. Whether the claimant though disabled from carrying out previous activities and function, is in a position to earn some income, is not also examined by the learned Tribunal. As such, the method adopted by the learned Tribunal for assessing compensation payable to the injured claimant cannot be said to be a proper and legal one.

9. Evidence of claimant Khuddus shows that by working as meson, he was earning Rs. 150/- per day. He further deposed that his left leg was fractured in this vehicular accident and he was hospitalized for about 20 days in the Government Hospital at Latur. The claimant further deposed that because of this accident, he is unable to sit and walk properly. He is required to take aid of the stick. Evidence of claimant Khuddus shows that he is unable to perform labour work with the same efficiency

by which he was working earlier to the accident. There is nothing in his cross examination to disbelieve his version about the injuries suffered in the accident and consequence of those injuries on his functional ability.

10. Claimant has placed on record photo-copy of his medical case record maintained at Government Hospital, Latur. This document at Exhibit 44 shows that claimant was hospitalized as indoor patient in the said hospital from 5-7-2007 to 28-7-2007 with fractured tibia fibula of left leg. It is seen that claimant was operated on 13-7-2007 for fixing fracture injury to his left leg, at Government Hospital, Latur.

11. Evidence of the claimant regarding permanent disability suffered by him as well as his medical treatment gains further corroboration from evidence of witness No.2 Dr. Sudhakar Gulve. Evidence of this Doctor goes to show that on 10-4-2008, the claimant had been to his hospital with history of pain in left leg with pain in ankle joint. It is seen from evidence of Dr. Gulve that the claimant had taken treatment from him. This Medical Officer has assessed 34 % permanent disability and issued certificate at Exhibit 59. Dr. Gulve stated in his evidence that the claimant suffered loss of strength of his left leg and ankle joint because of mal-alignment and abnormal mobility at site of the fracture. His cross examination shows that disability assessed by him was limb-wise and there is margin of error up to 2 %.

12. In the wake of this evidence on record, it will be apposite to record a finding that the claimant must have been earning at least Rs. 3,000/- per month which is considered to be income even of an unskilled labour [*See Laxmi Devi Vs. Mohd. Tabbar - 2008(2) TAC 394*]. Case of *Sri*

Ramachandrappa (supra) proceeded on its own facts and the income determined thereat was as per evidence in that case. Now, let us examine what should be the just and reasonable compensation to which the claimant is entitled. The claimant was hospitalized at Government Hospital, Latur, for more than 20 days. The claimant must have taken nutritious diet for his early recovery and for recouping loss of blood. As such, the claimant is found to be entitled for Rs. 25,000/- towards hospital expenses, expenses of attendance, conveyance, nourishing food and miscellaneous expenditure. The claimant must have been prevented from doing any sort of work at least for a period of six months because of his fractured left leg. As such, on account of loss of income caused because of the accident, the claimant is awarded amount of Rs. 18,000/-.

13. Now, let us examine whether the claimant has suffered permanent disability and effect of the permanent disability on his profession. Evidence of witness No.2 Dr. Gulve shows that the claimant has suffered 34 % permanent disability to his left leg as version of this Doctor appearing in cross examination shows that disability assessed by him was limb-wise. Witness No.2 Dr. Gulve has categorically stated that the claimant will not be able to do labour work efficiently as he requires external support for walking. Claimant Khuddus has deposed that he will not be in a position to do labour work with the same efficiency which he was doing previously. As such, it would be apposite to assess functional disability occasioned to the claimant due to injury suffered in the accident at 30 %. His evidence must have taken to be affected adversely at least by 30 %. Considering annual income of the claimant at Rs. 36,000/-, his loss of future income is estimated at Rs. 10,800/- per annum. Claimant was 19 years old at the time of accident in question. As such, by applying

multiplier of 18, loss of future income of the claimant is estimated at Rs. 1,94,400/-. In addition, the claimant is also entitled for an amount of Rs. 25,000/- towards permanent disability suffered by him as well as for loss of amenities of life. In addition, the claimant is found to be entitled for an amount of Rs. 10,000/- towards damages for pains and suffering as a consequence of injuries suffered by him. Thus, the claimant is found to be entitled for total compensation of Rs. 2,72,400/- and the same is awarded to him.

14. In the result, the appeal is partly allowed.

(a) The impugned judgment and order of the learned Member of the Motor Accident Claims Tribunal, Latur, is modified so far as quantum of compensation assessed by the Tribunal.

(b) It is held that respondents are jointly as well as severally liable to pay amount of Rs. 2,72,400/- to the appellant. The rest of the award of the learned Member of the Motor Accident Claims Tribunal, Latur, is confirmed. The amount already paid to the claimant be adjusted as on the date of payment.

(A.M. BADAR)
JUDGE

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