

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 182 OF 2004
WITH
CIVIL APPLICATION NO. 1221 OF 2004

1] Deorao S/o. Rustumra Garje (Died)
Through his Legal heirs.

A] Mhatardeo Deorao Garje
Age. 45 years, Occ. Agril

B] Bharat s/o. Deorao Garje
Age. 42 years, Occ. Agril

C] Parvati Narayan Darade
Age. 55 years, Occ. Agril

D] Suman w/o. Ashok Palwe
Age. 45 years, Occ. Agril

E] Vimal w/o. Udhavrao Palwe
Age. 47 years, Occ. Agril

F] Mangal Deorao Arje
Age. 40 years, Occ. Agril

G] Chhaya Sanjay Gaware
Age. 35 years, Occ. Agril

H] Kisanabai Deorao Garje
Age. 75 years, Occ. Agril

I] Sanjay S/o. Jagadish Garje
Age. 35 years, Occ. Agril

All R/o. Akol, Tal. Pathardi
District. Ahmednagar.

... Appellants

Versus

1] Yasin s/o Chandubhai Shaikh
Age 35 years, Occupation :
Agriculture, Resident of Akole
Taluka Pathardi,

District : Ahmednagar Orig. Applicant.

2] Sanjay s/o Jagdish Garje
Age 35 years, Occupation : Agril
Resident of Akole, Taluka Pathardi
Dist. Ahmednagar.Orig. Opp. No. 2

3] The New India Assurance Company Ltd.
Near Ashoka Hotel, Kings Road,
Ahmednagar, through Divisional
Manager, Ahmednagar, (Insureres
of Tractor No. MH-16-F-128) Orig. Opp. No. 3
... Respondents

Mr. N.K. Kakde & Mr. A.N. Kakde, Advocates for Appellants.

Mr. L.S. Shaikh h/f Mr. D.R. Jaybhar, Advocate for respondent
No.1.

Mr. M.M. Ambhore, Advocate for Respondent No. 3.

CORAM : T.V. NALAWADE, J.

DATED : 19th January, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 705/1997, which was pending before the Claims Tribunal, Ahmednagar. In favour of the original claimant Yasin, award of compensation of Rs. 1,84,549/- is made and this decision is challenged by the owner of offending vehicle. Heard both the sides.

2) The accident took place on 27.6.1997 at about 9.30 a.m. Claimant was aged about 23 years at the relevant time. It is his case that he was present on the tractor bearing No. MH-16/F-

128 and the trailer, which was attached to the tractor as a labour of respondent No. 1 - Deorao and they were carrying sand in the trailer. It is contended that due to rash and negligent driving of the tractor by respondent No. 2, the driver appointed by respondent No. 1, the vehicle went in to ditch, the claimant was thrown away and he virtually came under the tractor and sustained grievous injuries. It is his case that he sustained fracture injuries to his pelvis, he sustained injuries to scrotum, to urethra, to bladder, to intestine, to liver and due to injuries, there was opinion given that he had lost the fertility, potency. Under various heads, he had claimed compensation of Rs. three lakh.

3) The Insurance Company contested the matter. It contended that the risk to such person was not covered and risk only in respect of driver was covered under the policy.

4) Respondent Nos. 1 and 2 filed joint written statement. They did not deny the fact of the accident. They contended that respondent No. 2 was not driving the tractor at the relevant time. It is contended that at the relevant time, one Bharat, son of respondent No. 1 was driving the tractor and he was holding valid and effective driving licence.

5) As the fact that the tractor was standing in the name of respondent No. 1 is not disputed, the things will not make difference even if it is proved that one Bharat was driving the tractor. Copy of cover note of insurance policy is on the record and it shows that risk of only driver was covered and it was 'act only' policy. It was to be used for agricultural purpose. In view of these circumstances, there was no need to consider the case of breach of conditions of policy, the absence of driving licence of respondent No. 2. Admittedly, respondent No. 2 was not holding the licence to drive the tractor and case was filed against him in respect of that accident by police. In view of these circumstances, the challenge on the point of quantum needs to be considered.

6) The claimant has given evidence which is as per the aforesaid contentions. He has deposed that in the past, he was earning daily Rs. 100/- to 125/- by working as a labour with respondent No. 1, but, due to the injuries, he cannot earn anything. He has given evidence on the amount spent by him on treatment, medicines and attendance etc.

7) Dr. Deshpande is examined to prove the injuries

sustained by the claimant and to prove that his earning capacity has come down. The evidence of Dr. Deshpande shows that in his hospital, claimant was admitted and he received treatment as indoor patient from 27.6.1997 to 14.8.1997. The evidence of doctor shows that claimant had sustained injuries like fracture of pelvic bone on both sides, injury to urethra, injury to scrotum, injury to abdomen. He has given evidence that due to the injuries, the claimant is suffering from permanent disability and the extent of disability is 50%. All these injuries are mentioned in Exh. 54, disability certificate and also in discharge card at Exh. 51. His evidence shows that there is mal-union of fracture to pelvic. The X-rays in respect of fracture injuries are produced.

8) Due to a circumstance that after the accident, on 23.5.2003 daughter was born to the wife of claimant, the Tribunal held that there is no force in the case of loss of potency. Due to this circumstance, the Tribunal has held that the extent of disability is up to 30% and to that extent, the earning capacity is lost. The Tribunal has considered the earning as per Minimum Wages Act and has presumed that monthly income of the claimant at the relevant time was around Rs. 1500/-. Eighteen is adopted as multiplier for calculation of future loss of income and under that head the amount of Rs. 97,200/- is awarded. The bills

of medicines of Rs. 50,000/- are proved in the evidence of Dr. Deshpande. So, such amount is given as compensation under that head. More bills of Rs. 17,349/- were produced in respect of the treatment and so, the compensation in respect of that amount is also given. Amount of Rs. 10,000/- is given under the head of pain and suffering and amount of Rs.10,000/- is given under the head of amount spent on diet and attendance. No separate amount is given under the head of permanent disability when the evidence on the record shows that pelvic bone on both sides had fracture. There was injury to urethra, bladder, scrotum and also to abdomen. There was perforation of abdomen. In view of nature of injuries, this Court holds that the compensation awarded is on lower side. Some additional amount could have been definitely awarded under the head of permanent disability in view of the nature of injuries sustained by the claimant. This Court holds that it is not possible to interfere in the decision given by the trial Court.

9) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

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