

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

FIRST APPEAL NO. 215 OF 2006

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Santosh s/o Anandrao Kedare,
age 29 years, Occ. Labour,
R/o Georai, Tq. &
Dist. Aurangabad.

..Appellant..
(orig. claimant)

VERSUS

1. Bharatsingh s/o Ratansingh
Rajput, age 33 years, Occ. Driver,
R/o Dahegaon Bungalow,
Tq. Gangapur, Dist. Aurangabad.

2. M/s Shamal Prestressed Cement
Products Pvt Ltd., Shriniketan
Colony, Jalna Road,
Aurangabad.

3. United India Insurance Company
Ltd., through Branch Manager,
New Osmanpura, Branch Near
Darling Hotel, New Osmanpura,
Aurangabad.

...Respondents..
(orig Resp No.3.)

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Advocate for Appellant : Mr P M Gaikwad
Advocate for Respondent 3 : Mr S V Kulkarni

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CORAM : V.K. JADHAV, J.

Dated: March 31, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and Award
passed by the learned Member, Motor Accident Claims

Tribunal, Aurangabad dated 11.10.2005 in Motor Accident Claims Petition No.273 of 2003, the original claimant has filed present appeal.

2. Brief facts giving rise to the present appeal are as under :-

a] On 17.7.2002 at about 09.00 a.m. the claimant was proceeding to village Chitegaon on foot alongwith his relatives. One truck bearing registration No.MCA-2764 being driven by its driver in a rash and negligent manner gave dash to him. In consequence of which the appellant/claimant had sustained grievous injuries on his right hand. He was immediately shifted to the private hospital of Dr. Patwardhan, Aurangabad. The injuries sustained by the appellant/claimant resulted into permanent disablement to the extent of 15%. Thus, the appellant-claimant has filed M.A.C.P. No.273 of 2003 before the Tribunal, Aurangabad, for grant of compensation under various heads.

b] Respondents No.1 and 2 the driver and owner of the vehicle involved in the accident failed to contest the

petition. The Respondent No.3-insurer has strongly resisted the claim by filing written statement at Exh.26. The learned Member of the Motor Accident Claims tribunal, Aurangabad by its impugned judgment and award dated 11.10.2005 partly allowed the claim petition and thereby directed the respondents No. 1 to 3 jointly and severally to pay Rs.25,000/- (Rs. Twenty Five Thousand) including 'No Fault Liability' amount to the claimants with interest. The appellant-claimant has thus preferred this appeal to the extent of quantum of compensation.

3. The learned counsel for the appellant submits that, the learned Member of the Tribunal has not applied the multiplier method and awarded lumpsum compensation of Rs.25,000/- only. The learned counsel submits that, after the accident, the claimant was hospitalized in a private hospital of Dr. Patwardhan and he had to undergo surgery. Learned counsel submits that, the claimant was remained as indoor patient for some days in the said hospital and thereafter he had attended Dr. Patwardhan Hospital as out door patient

for follow up treatment. Learned counsel submits that, the injuries sustained by the claimant on his right hand resulted into permanent disablement to the extent of 15% and certificate is issued by Orthopaedic Surgeon is produced on record and marked as Exh.29. Learned counsel submits that, the claimant was doing labour work in Videocon Company on wages of Rs.70/- per day. Furthermore, he was also selling vegetables in the market and gets Rs.1,500/- to Rs.2,000/- p.m. Learned counsel submits that, the claimant is not able to perform his work as it was prior to the accident. The claimant had sustained loss in the actual income as well as he will lose his future income on account of his permanent disablement sustained by him. Learned counsel submits that, the Tribunal has not considered the same and awarded lumpsum compensation which is not proper, correct and legal. The learned counsel for the appellant-claimant submits that, the Tribunal has erroneously awarded interest @ 7.5% p.a.

4. Learned counsel for respondent no.3 - Insurer submits that, there was a breach of policy as the driver

of the truck was not holding valid and effective driving licence at the time of the accident. Learned counsel submits that the permanent disablement sustained by the claimant even accepted as it is, it hardly affects his earning capacity. Learned counsel thus, submits that, considering the same, the Tribunal has awarded lumpsum amount as compensation. No interference is required and the appeal is thus liable to be dismissed.

5. It is not disputed that the claimant has proved that the driver of the vehicle Tempo Truck bearing registration No. MCA-2764 was rash and negligent in driving his vehicle at the time of accident and the claimant sustained injuries on account of such driving. In view of this, following points arises for my determination and I have recorded my findings to those points for the reasons given below :-

Sr No	POINTS	FINDINGS
1.	Whether the Tribunal has correctly assessed the compensation ?	Negative.
2.	Whether the impugned Judgment and Award calls for any interference ?	Affirmative.
3.	What order ?	As per final order.

REASONS**6. POINT NOS.1 AND 2 :-**

It appears that the learned Member of the Tribunal has not applied multiplier method and awarded lumpsum compensation to the claimant. The Tribunal has not given any specific reasons for not applying the multiplier method and for awarding the lumpsum amount as compensation. I do not find any reason to grant lumpsum amount as a compensation by not applying multiplier method.

7. The appellant-claimant Santosh has deposed that, on account of dash given by the said truck he had sustained injuries on his right hand. He was hospitalized for about three days in the hospital of Dr. Patwardhan, Aurangabad who is a Orthopaedic surgeon and thereafter he remained as out door patient for follow up treatment. In order to substantiate his contention, the claimant has produced on record permanent disablement certificate in form Comp. 'B' issued by Dr. Patwardhan, who is orthopedic surgeon, the same is marked as Exh.29. On perusal of said certificate in

form comp. 'B', it appears that, the injuries are described in the certificate. It is stated in the certificate that the claimant has sustained CLW over volar aspect of right forearm alongwith cut injury to the median nerve. It has thereafter certified that said injury lead to 15% (Fifteen Percent) permanent disability. The Respondent-insurer has only suggested to the claimant that he has not sustained any sort of disability. So, there is no reason to discard certificate which is in form comp 'B' issued by Dr. Patwardhan, Orthopaedic Surgeon, Aurangabad.

8. According to the claimant, he was serving in Videocon Company on wages of Rs.70/- per day. Further he also used to sell vegetables in the market and earning Rs.1,500/- to Rs.2,000/- p.m. It is true that the claimant has not filed any document to substantiate his contention before the tribunal, however, the tribunal should have considered his notional income on the basis of wages earned by the Labour during that period. As per the claimants own version, he was getting Rs.70/- per day in the said company as wages

for doing labour work. In absence of any evidence of earning from selling of the vegetables, claimant's notional income can be considered as Rs.70/- per day. Hence, his monthly income comes to $\text{Rs.70} \times 30 = \text{Rs.2,100/-}$. The injuries sustained by the claimant resulted in permanent disability to the extent of 15%. The claimant has not deposed before the Tribunal that, in what way said permanent disablement has affected his earning capacity. In absence of any positive evidence in this regard, same percentage can be treated as percentage affecting his earning capacity. There is no dispute that appropriate multiplier considering the age of the claimant would be '17' in the present case.

9. In view of this, if the monthly income of the claimant is considered as Rs.2,100/-, then his yearly income comes to $\text{Rs.2,100} \times 12 = 25,200/-$. If yearly income is multiplied by the multiplier '17', it comes to $\text{Rs.25,200} \times 17 = \text{Rs. 4,28,400/-}$. Thus, total loss of income would come to Rs.4,28,400/-. Since the claimant has sustained disablement to the extent of 15% and the same is treated as affecting his earning

capacity, then, 15% of Rs.4,28,400 comes to Rs.64,260/-. The claimant is entitled to Rs.64,260/- for loss of future income.

10. Though the claimant has not produced before the Tribunal any medical bills, certificate issued by Dr. Patwardhan is placed on record and the same is marked as Exh.29. On perusal of the same, it appears that the claimant was treated as indoor patient from 17.7.2002 to 19.7.2002 and out door patient from 20.7.2002 and then stated in the certificate that the claimant is still under treatment. Said certificate is issued on 12.3.2003. Considering the same, and the fact that Dr. Patwardhan runs a private hospital, it would be just and proper to award Rs.15,000/- to the claimant as medical expenses. The claimant Santosh is resident of village Georai, Tq. Bidkin, District Aurangabad. It would be thus appropriate to award him Rs.5,000/- as a travelling expenses for visiting hospital of Dr. Patwardhan at Aurangabad frequently during the course of his treatment. The claimant is also entitled for an amount of Rs.5,000/- for pains and sufferings and Rs.5,000/-

for loss of amenities in future life. The claimant has also remained in door patient of Dr. Patwardhan initially for a period of three days and thereafter for almost a year as out door patient, the claimant is entitled for an amount of Rs.5,000/- as compensation for loss of actual income. Thus, break up of compensation can be categorized as under :-

No.	HEADS	AMOUNT (IN RUPEES)
1.	Loss of future income/permanent disablement.	64,200/-
2.	Loss of actual income	05,000/-
3.	Medical Expenses	15,000/-
4.	Travelling Expenses	05,000/-
5.	Pains and sufferings	05,000/-
6.	Loss of amenities	05,000/-
	TOTAL	99,260/-

(Rs. Ninety nine thousand two hundred sixty only)

11. Thus, the claimant is entitled for total compensation of Rs.99,260/- (Rs. Ninety nine thousand two hundred sixty only) with interest at the rate of 9% per annum from the date of application till the

realization. The Respondents are jointly and severally liable to pay the same. Accordingly, I answer the points and proceed to pass the following order.

ORDER

- I. First Appeal is hereby partly allowed with proportionate costs.
- II. The Judgment and Award dated 11.10.2005 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claims Petition No.273 of 2003 is hereby modified to the following effect :-

The respondents No. 1 to 3 shall jointly and severally pay Rs.99,260/- (Rs. Ninety nine thousand two hundred sixty only) including 'No Fault Liability Amount' to the appellant-claimant. The claimant is entitled to get interest @ 9% p.a. from the date of application till realization.

- III. Rest of the impugned Judgment and Award stands confirmed.
- IV. Award be drawn up accordingly.
- V. First Appeal is disposed of.

sd/-
(**V.K. JADHAV**)
JUDGE

aaa/-

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