

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

FIRST APPEAL NO. 143 OF 2001.

The Divisional Controller
Maharashtra State Road Transport
Corporation, Latur Division,
Latur, District Latur.

... Appellant
(Ori. Resp. No. 1)

Versus

1] Shri. Shesherao Nagnath Chamale,
Age : 43 years, Occ. Agri.,
Resident of Konali, Post : Devangaon,
Taluka Udgir, District Latur.

2] Abbas Abu Vastad,
Age : 40 years, Occu. Driver,
S.T. Depot, Tuljapur,
District Osmanabad.

... Respondents
(Resp. No. 1 - Ori.
Claimant and Resp.
No. 2 - Ori. Resp. No.2)

Mrs. R.D. Reddy, Advocate for appellant.

Mr. V.D. Gunale, Advocate for respondents Nos. 1 & 2.

CORAM : T.V. NALAWADE, J.

DATED : 19th January, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 9/1997 which was pending before the Claims Tribunal, Latur. To respondent - Sheshrao the compensation of Rs. three lakh twenty five thousand is granted in respect of the injuries sustained by him in motor vehicle accident and this

decision is challenged by the Maharashtra State Road Transport Corporation (M.S.R.T.C.), the owner of offending vehicle. Both the sides are heard.

2) The accident took place on 25.1.1996 at about 3.00 a.m. on Udgir - Nanded road within local jurisdiction of Udgir Police Station. It is the case of claimant that he was present on the motorcycle and a bus of M.S.R.T.C. bearing No. MH-20/D-0956 gave dash to the motorcycle and accident took place. He has contended that the accident took place due to fault of bus driver only.

3) The claimant sustained fracture injuries due to which there is amputation of right leg above knee. There were injuries on his face and to other parts.

4) It is the case of claimant that in the past, he was cultivating the family land and his monthly income was more than Rs. 20,000/-. Under various heads, he had claimed the compensation of Rs. five lakh. The Tribunal has awarded compensation of Rs. 3.25 lakh.

5) The claimant has examined himself to prove his case

and he placed reliance on the medical report and the police papers. Other record was not disputed by the other side. No evidence in rebuttal was given. In the present matter also argument was advanced only on the point of quantum of compensation.

6) The evidence of claimant shows that he is having 55 Acres of agricultural land and 10 Acre portion is irrigated. He has give evidence that he was personally cultivating the land with the help of labour. He has given evidence that he was required to spend atleast Rs. 75,000/- on treatment and medicines. He has given evidence that due to the aforesaid injuries, he cannot work in the field and so, he is entitled to get the compensation claimed.

7) The M.L.C. prepared by the Government Hospital shows that major six injuries were sustained by the claimant and main injuries were crush injuries to his right leg. The record of treatment shows that he received treatment in Hardikar Hospital, Pune. Due to aforesaid injuries and particularly, due to amputation of right leg above knee, there is permanent disability which is to the extent of 50%. There was injury to right elbow and movements of right hand are restricted by 33%. Due to

injuries to upper limb, the extent of permanent disability is mentioned as 7%. As one leg is lost above knee, there was no need to examine the doctor to show that the earning capacity has come down. It can be safely presumed that earning capacity has come down by more than 50%.

8) The record like Khata extracts, 7/12 extracts are produced and this record is consistent with the case of claimant that he was having 50 Acres of agricultural land. The bills of medicines and treatment are produced and they were not disputed before the Tribunal by the appellant. The Tribunal has granted the amount of Rs. 75,000/- as compensation under the head of amount spent on treatment and medicines and it has support of bills of medicines and treatment. Under other head, meager amount is granted and the amount of Rs. two lakh is granted under the head of loss of future income. When the claimant is having more than 50 Acres of agricultural land, the Tribunal has presumed that the annual income was around Rs. 20,000/-. No calculation of compensation under any method is done. The accident took place in the year 1996 and in view of the aforesaid record, it could have been safely presumed that the monthly income was around Rs. 3,000/- and the earning capacity is reduced by 50% and so, there is monthly loss of Rs.

1,500/-. Fourteen could have been used as a multiplier as the age was given as 43 years. Even in that case the compensation under the head of loss of future income could have been more than Rs. 2.5 lakh. Separate amount could have been given under the head of permanent disability as the claimant had lost one leg and he sustained grievous injury to his right hand. Thus, the compensation granted by the Tribunal is on lower side. It is not possible to interfere in the decision given by the Tribunal.

9) In the result, the appeal stands dismissed. Amount, if any, deposited in this Court is to be disbursed as per the award made by the Tribunal.

[T.V. NALAWADE, J.]

ssc/