

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 611 OF 2010

Shri Ravindra @ Chhotu Dhondu Badgujar
Age : 29 years, Occu. : At present nil,
R/o. Kadholi, Taluka Erandol,
District Jalgaon.

... Appellant
(Orig. Claimant)

Versus

1. United India Insurance Company Ltd.
9, LIC Colony, Ring Road, Jalgaon.
Through Manager
Mansingh Market, Navi Peth,
Jalgaon.

2. Shri Gulab Sitaram Tayade
Age : 35 years, Occu.: Business,
R/o. Kadholi, Taluka Erandol,
District Jalgaon.

... Respondents

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Mr. M. M. Bhokarikar, Advocate for the appellant
Mr. S. V. Kulkarni, Advocate for respondent No.1
Mr. Anudeep Sanap h/f Mr. V. B. Patil, Advocate for respondent No.2

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CORAM : V. K. JADHAV, J.
DATED : 5th MAY, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 6.11.2009 in M.A.C.P. No. 415 of 2000, the original claimant has preferred this appeal to the extent of quantum.

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

On 25.2.2000 between 1.00 p.m. to 2.00 p.m. the claimant was travelling in 307-seater vehicle bearing registration No. MH-19-L-1207 from village Paldhi to village Kadholi and on way, within the limits of village Dharangaon, driver of the said vehicle lost his control over it, due to which, accident had occurred. In consequence of which, the claimant suffered fracture injury on his right leg and he was required to be operated. Furthermore, the injuries sustained by him on his right leg resulted into permanent disablement. The claimant has also spent huge amount on his medial treatment. He was 29 years old at the time of accident and he was earning Rs.3500/- per month from his business. The claimant, therefore, filed M.A.C.P. before the Motor Accident Claims Tribunal, Jalgaon for grant of compensation under various heads. The respondent-insurer contested the claim petition on the ground that driver of the said vehicle was not at fault and claimant has not suffered any injury in the accident etc. Learned Member of the Tribunal, by its impugned judgment and award dated 6.11.2009, partly allowed the claim petition with proportionate costs and thereby directed the respondents jointly and severally to pay an amount of Rs.1,50,000/- to the claimant with interest @ 7.5% per annum from the date of claim petition till realization of entire amount. Being aggrieved by the same, the original claimant has preferred this appeal to the extent of quantum.

3. Learned counsel for the appellant submits that the Tribunal has not considered the disability certificate Exh.37 issued by the civil Surgeon, Jalgaon. It is specifically mentioned in the said certificate that the claimant suffered post traumatic stiffness of right ankle joint with shortening of right leg by one-half inch and permanent disability is shown to have been suffered to the extent of 13%. Furthermore, the Tribunal has awarded Rs.1,00,000/- towards medical expenses, though the claimant has produced on record the medical bills issued by registered medical shop of Sancheti Hospital, Pune. Furthermore, the Tribunal has not awarded compensation under the heads of pains and sufferings, loss of amenities in future life and even for the shortening of leg. It is practically impossible for the claimant to prove each and every medical bill issued by the medical shop and to claim compensation as per the proved medical bills only. In order to substantiate his submissions, learned counsel for the appellant placed reliance on the judgment in the case of ***Prakash s/o Mahadeorao Nirmal vs. Rajesh Ramfer Yadav***, reported in **2014 (3) Mh.L.J. 415**.

4. Learned counsel for the respondent-insurer submits that, considering the facts and circumstances of the case, the Tribunal has awarded just and reasonable compensation. Even though medical bills are produced before the Tribunal, the same are not proved by

the claimant and therefore, the Tribunal has awarded compensation towards medical bills to the extent of Rs.1,00,000/- only. Furthermore, in absence of any loss in future income and considering the nature and percentage of disablement, the Tribunal has awarded lump sum compensation of Rs.50,000/- for loss of earning during the period of treatment, which is just and reasonable.

5. The claimant has deposed before the Tribunal that prior to the accident, he was doing business of selling chilly power and was earning Rs.3500/- per month. However, he has not substantiated his contention that because of the permanent disablement, which is to the extent of 13% only, he is not able to carry on his business. Even the claimant has not examined the concerned Medical Officer, who has issued the disablement certificate, to substantiate his contention that said disablement has affected his earning capacity substantially. In absence of expert opinion and considering the fact that the claimant is running business of selling dry chilly powder, I do not think that there is any loss in future income as such.

6. So far as compensation on account of medical expenses incurred by the claimant is concerned, in my opinion, the Tribunal has awarded less amount of compensation compared to the medical bills submitted before the Tribunal.

7. This Court, in the case of ***Prakash s/o Mahadeorao Nirmal*** (*supra*), relied upon by learned counsel for the appellant, has observed that if the medical papers corroborate nature of injury sustained by the claimant, the same can be read in evidence. The evidence is required to be judged upon preponderance of probabilities and not on basis of principle of proof beyond reasonable doubt. This Court further held that the Tribunal is not justified in not considering the said medical papers in evidence.

8. In the present case also, the Tribunal has not considered the medical bills, though issued by the registered medical shop of Sancheti Medical Hospital, Pune. Considering the medical bills placed on record, it would be just and proper to award Rs.50,000/- in addition to Rs.1,00,000/- as awarded by the Tribunal for medical expenses.

9. On perusal of the medical certificate Exh.37 issued by Civil Surgeon, Jalgaon, it appears that the claimant has suffered post traumatic stiffness of right ankle joint with shortening of right leg by one-half inch. The claimant was 29 years of age at the time of accident. It appears that the Tribunal has not awarded any compensation for the said permanent disablement. It would be just and proper to award Rs.50,000/- for the injury sustained by the

claimant which has resulted into permanent disablement as aforesaid. Furthermore, the Tribunal has not awarded any compensation for pains and sufferings and loss of amenities in future life. It appears from the medical papers and the medical bills produced on record that for a long period, the claimant remained in hospital as indoor patient and thereafter, as outdoor patient for follow-up treatment. He was also operated in Sancheti Hospital at Pune. In view of this, the claimant is entitled for amount of Rs.40,000/- for pains and sufferings due to shortening of right leg by one-half inch. The claimant, who is a young man, has lost future amenities in life. In view of this, the claimant is entitled for amount of Rs.25,000/- more.

10. In view of the above discussion, the breakup of compensation, which can be broadly categories under various heads, is as under:-

i)	Loss of actual income due to injury sustained by the appellant	Rs. 50,000.00
ii)	Medical expenses	Rs. 1,50,000.00
iii)	Pains and sufferings	Rs. 40,000.00
iv)	Loss of amenities	Rs. 25,000.00

		Rs. 2,65,000.00
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(Rupees two lacs sixty five thousand only)

11. In light of the above, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 6.11.2009 passed by learned Member, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 415 of 2000 is hereby modified in the following manner:-

“The respondents jointly and severally do pay an amount of Rs.2,65,000/- (Rupees Two lacs sixty five thousand only) to the claimant with interest @ 7.5% per annum from the date of application till realization of the amount, including the N.F.L. amount.”

- III. Award be drawn up in tune with the above modification.
- IV. The First appeal is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/