

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 45 OF 2006

Pradeep s/o Janardhan Upade,
age 30 years, Occupation Labour,
R/o Takli (B), Taluka and District Latur. ... Appellant

Versus

1. Sayed Nasirullah s/o Sayed Vikayatullah,
age : Major, Occupation Business,
R/o. Waman Nagar, Nanded,
Taluka and District Nanded.

Respondent No. 1 is deleted
as per Court's order dated 18.01.2006.

2. The Manager,
National Insurance Co. Ltd.,
Branch Office Latur. ... Respondents

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Advocate for Appellant : Mr. A. V. Rakh h/f Mr. N. D. Kendre
Advocate for respondent No. 2 : Mr. D. V. Soman

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CORAM : V. K. JADHAV, J.
DATED : 30th MAY, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 20.09.2004 passed by learned Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 271 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 follows :

a) On 10.04.2000 at about 11.30 p.m., claimant was proceeding by Latur-Barshi road by riding his motorcycle bearing registration No. MH-24-C-1814. At the place of occurrence of the accident, a travel bus having registration No. MH-26-B-686 came in opposite direction in speed and gave dash to the motorcycle of claimant resulting into an accident. In consequence of which, claimant sustained severe injuries which resulted into permanent disablement. Thus, the claimant preferred claim petition before M.A.C.T., Latur for grant of compensation under various heads. The original respondent Nos. 1 and 2, i.e. the driver and the owner of the said travel bus had not filed their written statement and therefore, hearing of the claim petition was ordered to proceed without their written statement. Respondent No. 3-insurer strongly resisted the claim petition by filing written statement. According to respondent-

insurer, the claimant himself was responsible for the accident and driver of the bus was not at all responsible. It is further contended that the claimant has not sustained any permanent disablement.

b) Learned Member, Motor Accident Claims Tribunal, Latur, by the impugned judgment and awarded dated 20.09.2004, partly allowed the claim petition with proportionate costs and thereby directed the respondents jointly and severally to pay total amount of compensation of Rs.1,18,000/-, inclusive of interim compensation, along with interest at the rate of 9% per annum. Being aggrieved by the quantum, the original claimant has preferred this appeal.

3. Respondent-insurer has not preferred any appeal, nor filed any cross objection to the present appeal. The claimant has proved before the tribunal that the accident was caused solely on account of rash and negligent driving of the driver of travel bus bearing registration No. MH-26-B-686. Furthermore, the claimant has also succeeded in proving before the

tribunal that the injuries sustained by him resulted in permanent disablement as certified by the Government Medical Officer.

4. In view of the above, the present appeal is considered to the extent of quantum of compensation as awarded by learned Member, Motor Accident Claims Tribunal, Latur.

5. Learned counsel for the appellant-original claimant submits that the appellant-claimant has claimed total amount of compensation of Rs.1,50,000/- and the tribunal has awarded Rs.1,18,000/- as total compensation. Even though the appellant-original claimant has restricted his claim in the appeal to the extent of the remaining amount of Rs.32,000/-, the claimant is entitled for a just and reasonable compensation. The claimant is ready to pay the deficit court fees if he is legally entitled to enhancement in compensation as awarded by the tribunal. The tribunal, without giving any reasons, made a departure from the multiplier method and awarded a lump sum amount as

compensation for permanent disablement sustained by the claimant. The tribunal has not considered that the injuries sustained by the claimant, which resulted in permanent disablement, affected the earning capacity of claimant to the considerable extent and as such, there is total loss of future income. Claimant has examined Dr. Arun Kumar Rao as witness No. 2. The said witness has given all the details of disablement sustained by the claimant and further opined that the claimant, being agricultural labour, cannot do the said work in future. Even learned Member of the tribunal, in light of opinion expressed by witness No. 2 Dr. Rao, has observed that the claimant is unable to work with the same strength as that of prior to the accident, however, failed to apply multiplier method for assessing the loss of future income.

6. Learned counsel for the respondent-insurer submits that the appellant-original claimant has restricted his appeal to the extent of remaining amount of compensation of Rs.32,000/-. There are two disability certificates produced on record by the claimant. So far

as the disability certificate Exh.35 is concerned, the claimant is shown to have been suffering from 27% of disability and as per the disability certificate Exh.40, the claimant is suffering from disablement to the extent of 37%. Considering these two certificates, the learned Member of the tribunal has rightly awarded lump sum amount of compensation. No interference is called for in the impugned judgment and award and the appeal is thus, liable to be dismissed.

7. On careful perusal of the record and proceedings, it appears that the claimant has examined Dr. Rao as witness No. 2 who is Head Of Department of Orthopaedics at Medial College, Latur. Witness No. 2 Dr. Rao has deposed that claimant Pradeep was admitted at the Medical College and Hospital firstly on 08.10.2000 and at that time, he was treated by him. On his examination, he noted the following injuries :

1. Fracture of neck or femur – right side.
2. Fracture shaft with the nailing – right side, which was operated with the nailing. The

said fracture was not united and was infected.

3. Open wound over the right knee with infection relating to fracture of patella right side which was operated at govt. hospital, Latur.
4. There was fracture of clavicle left side which was united.

He has further deposed that the claimant was operated on 12.10.2000 for removing the wires over the knee, as knee cap was already removed while operating the said injury at govt. hospital, Latur. He has further clarified that the claimant was again operated on 01.01.2001 for removing the nail of right femur and further operated on 02.11.2001 for the fixation of fracture of neck of femur. He has further deposed that the claimant was operated again on 23.01.2004 for removing dead bone of right femur. Accordingly, witness No. 2 Dr. Rao has issued certificate in Form Comp "B"-Exh.40 with the specification that because of the fractures, the claimant is suffering from restrictions of movement of hip and knee joint and there is shortening

and infection to right femur.

8. So far as the earlier disablement certificate Exh.35 issued by the Government Hospital, Latur is concerned, the same was issued after examination of the claimant on 03.03.2001. Even witness No.2 Dr. Rao has deposed that the wires over the knee came to be removed by him as the knee cap was already removed while operating the said injury at government hospital, Latur. Furthermore, witness No.2 Dr. Rao has given reference of the operation dated 23.01.2004 when the claimant was lastly operated for removing dead bone of right femur. Permanent disability certificate Exh.40 came to be issued on 04.08.2004. Witness No. 2 Dr. Rao has further stated in his cross-examination that with the nature of disability, the claimant cannot work with the capacity of other agricultural labour.

9. In view of the above, the tribunal should have considered the permanent disablement certificate Form Comp "B" Exh.40 issued by witness No.2 Dr. Rao, which is later in time. It appears that the tribunal has not

considered the said disablement certificate Exh.40 and awarded the lump sum compensation of Rs.50,000/-. The same cannot be justified on any ground. There is no reason for the tribunal to make departure from the multiplier method for assessing the loss of future income.

10. Though witness No.2 Dr. Rao has stated in his cross-examination that the claimant cannot work with the capacity of other agricultural labours, the claimant, in paragraph No. 5 of his examination-in-chief has deposed that he is unable to fold his injured leg resulting into inconvenience and difficulty for day to day work. The claimant has not deposed before the tribunal that because of the injuries sustained by him, which resulted in permanent disablement as per certificate issued by Dr. Rao, his earning capacity is affected to the extend of 100%, and thus, there is total loss of future income. However, considering the permanent disablement certificate Exh.40, issued by witness No.2 Dr. Rao, and the specifications of the permanent disablement sustained by the claimant, I am of the

considered view that the earning capacity of the claimant is affected because of the said permanent disablement to the extent of 50%.

11. Learned Member of the Tribunal has rightly considered the normal wages of labour in the rural area. Hence, it can be safely concluded that the claimant was earning Rs.70/- per day by doing agricultural labour work prior to the accident. It is not disputed that the claimant was 32 years of age at the time of accident. If the income of the claimant is considered as Rs.70/- per day, which corresponds to Rs.2100/- per month, and Rs.25,200/- per annum, considering the age of the claimant at the time of his accident, multiplier 16 would be appropriate for assessing the loss of future income. In view of the above, the total loss of future income comes to Rs.4,03,200/-. As discussed above, since the earning capacity of the claimant is affected to the extent of 50% due to the permanent disablement sustained by him, the claimant is entitled for an amount of Rs.2,01,600/- as loss of future income. Learned Member of the tribunal has awarded just and reasonable

compensation under the non-pecuniary heads.

12. Thus, the break up of compensation under various heads which can be broadly categorized as under:

1.	Loss of future income -	Rs.2,01,600/-
2.	Loss of actual income -	Rs.0,10,000/-
3.	Pains and sufferings -	Rs.0,20,000/-
4.	Additional amount for - injuries sustained by the claimant	Rs.0,15,000/-
5.	Medical expenses -	Rs.0,16,000/-
6.	Ancillary expenses -	Rs.0,07,000/-

TOTAL	Rs.2,69,600/-

The claimant is thus, entitled for an amount of Rs.2,69,600/- along with interest as prescribed by learned Member of the tribunal. Hence the following order:

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 20.09.2004 passed

by learned Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 271 of 2000 is hereby modified in the following manner:

The opponent Nos. 2 and 3, jointly and severally shall pay total amount of compensation of Rs.2,69,600/-, inclusive of interim compensation of Rs.25,000/- and shall pay interest @ of 9% p.a. on the unpaid amount of compensation till realization of the entire amount.

- III. Needless to say that the amount as per the original award, if paid by the respondent-insurer, the same shall be deducted from the amount of compensation as per the modified award.
- IV. The appellant-claimant shall pay the deficit court fees within a period of one month from the date of this order.
- V. Award be drawn up in tune with the modification as aforesaid.
- VI. The First Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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