

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

FIRST APPEAL NO.: 821 OF 2004

1. The State of Maharashtra.
2. The Executive Engineer,
Public Works Department,
(Mechanical Division),
Nanded.

... **APPELLANT**
(ORIG. RESPONDENT)

VERSUS

Shaikh Afsar Shaikh Habib,
Age: 44 yrs., Occp. Labour,
R/o Ardhapur, Tq. Ardhapur,
Dist. Nanded.

... **RESPONDENT**
(ORIG. APPELLANT).

AGP for the Appellants: Miss. R. P. Gour.
Advocate for the Respondent: A. N. Ansari.
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CORAM:-
DATED:-

T. V. NALAWADE, J.
8th JANUARY, 2016.

ORAL JUDGMENT:

1. The appeal is filed against judgment and Award of Claim Petition No.557 of 1998 which was pending before Claims Tribunal, Nanded. Heard learned A.G.P. for the Appellants, the owner.

2. The claim was filed by present Respondent for compensation in respect of injuries sustained by him in motor vehicle accident. He was aged about 35 years and according to him he was earning Rs.3,000/- per month by working as labour. The accident took place on 24th April, 1998 at about 1.30 p.m. at Hingoli gate near over bridge of Railways, Nanded. The spot is situated within local jurisdiction of Shivajinagar Police Station, Nanded. It is the case of claimant that on that day he was a pillion rider on one motor cycle and jeep bearing No.MHZ- 404 came from opposite direction and gave dash to the motor cycle. It is his case that accident took place due to fault of jeep driver. The jeep belongs to State Government department.

3. It is the case of claimant that he sustained grievous injury in the accident to right leg and even after the treatment he is not fully recovered. It is his case that he was bed ridden for many months and he could not do any work. It is his case that he spent Rs.25,000/- on treatment, medicines etc. It is his case that he is suffering from permanent disability and he can not do any hard work due to the injury. He had claimed compensation of Rs.1.5 Lakh.

4. Present appellants filed written statement and denied everything. The Appellants contended that there was no fault on the part of jeep driver. It was contended that the accident took place due to fault of rider of the motor cycle.

5. Issues were framed on the basis of aforesaid pleadings. Only the claimant gave evidence. The claimant blamed the jeep driver for the accident. He placed reliance on copies of police papers which include copy of FIR, copy of spot Panchanama etc. It is not disputed that charge sheet came to be filed against the driver of the jeep in respect of the said accident.

6. To give evidence in rebuttal the appellant examined the driver of the jeep. He has deposed that the jeep was not at all involved in the accident and the motor cycle fell due to the obstruction of speed breaker. This evidence is inconsistent with the police papers as the police paper show that a dash was given by jeep from the front mudguard of the jeep and damage was caused to the mudguard. In view of this circumstance, this Court holds that the Tribunal has not committed any error in holding that the jeep was involved in the accident and the accident

took place due to fault of jeep driver.

7. The claimant has given evidence that he sustained fracture to his leg. He was required to spend Rs.30,000/-. He has given evidence that he was bed ridden for many months. He has given evidence that due to the injury he is suffering from permanent disability and he cannot stand or work for long time. He has given evidence that there are still implants in his legs and he will be required to undergo more operations.

8. The MLC is produced and it shows that he has sustained injuries, which include compound fracture of Tibia fabula right leg. Permanent disability certificate is at Exhibit-31 and it shows that due to injury to the leg there is permanent disability to the extent of 25%. Some bills of medicines were produced and they are considered by the Tribunal. The X-ray plates etc. are also produced.

9. When the extent of permanent disability is 25% the Tribunal has held that the earning capacity must have come down by 10%. The Tribunal has presumed that the annual income was around Rs.25,000/- and so there is loss

of Rs. 2,500/- per year. Even when the age of the claimant was around 26 years the Tribunal has used 12 as multiplier for calculation of loss of future income. Then under the head of loss of future income the amount of Rs.30,000/- is awarded by the Tribunal. The Tribunal has awarded the amount of Rs.15,000/- towards loss of income during the period of treatment by holding that he must have been bed ridden for at least 6 months. The amount of Rs.5,000/- is given under the head of pains and suffering and the amount of Rs.10,000/- is awarded under the heads of amount spent on medicines, treatment, attendance etc.

10. The judgment of the Tribunal shows that no separate amount was given under the head of loss of enjoyment of life. In view of the nature of injury it can be said that the Tribunal could have presumed that earning capacity is lost to do hard labour work and the loss is around 25%. Similarly, higher multiplier like multiplier of 15 could have been used for calculation of loss of future income. Thus, meager amount of Rs.60,000/- is awarded by the Tribunal and this Court has no hesitation to observe that the compensation awarded is on lower side. This Court holds

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821

that it is not possible to interfere in the decision of the Tribunal.

11. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated:08/01/2016.
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