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

FIRST APPEAL NO.: 643 OF 2007

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Samabai W/o. Vithal Sirsat,
Age: 50 years, Occu. Household &
Business, R/o. Fawadewadi,
Tq. Renapur, Dist. Latur. ... **APPELLANT**
(ORIGINAL CLAIMANT)

VERSUS

1. Mahaesh S/o. Rameshrao Katale,
Age: Major, Occu.: Driver,
R.o. Kumbhari, Tq. Renapur,
Dist. Latur.

2 Ramesh S/o. Sambhaji Katale,
Age: Major, Occu.: Business & Auto Owner,
R.o. As above.

3. United India Insurance Company Ltd.,
Through its Branch Manager,
Opp. Gorakshan, Main Road,
Tilak Nagar, Latur. ... **RESPONDENTS**
(ORIGINAL OPPONENTS)

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Mr. R. K. Ashtekar, Advocate h/f Mr. M. B. Bharaswadkar, Advocate for the Appellant.
Mr. A. G. Kanade, Advocate for Respondent No.3.

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CORAM:- T. V. NALAWADE, J.
DATED:- 12th JANUARY, 2016.

JUDGMENT:

1. The appeal is filed by original claimant to challenge the judgment and Award of Claim Petition No.197 of 2004 which was pending before Claims Tribunal, Latur. Both the sides are heard.

2, The claimant was aged about 50 years and it is her case thas she was working as vegetable vendor and she was earning at least Rs.3,000/- per month. It is her case that in the accident she sustained grievous injuries to her face, and to her hand and due to that her earning capacity has come down. It is her case that, she is suffering from permanent disability. It is her case that she was required to spend huge amount on medicines and treatment and also on attendance. She had claimed compensation of Rs.3 Lakh. The proceeding was contested by Respondents. The Tribunal has awarded compensation of Rs.70,550/- on the principal of fault which is inclusive of the compensation already granted under the principal of no fault. The interest at the rate of 7.5% p.a. is awarded.

3. To substantiate her claim, the claimant has examined

herself and her evidence is as per aforesaid contentions. The crime was registered for offence punishable under secftion 279, 338 etc. of I.P.C. The M.L.C. prepared by General Hospital, Latur shows that she had sustained injuries like (i) laceration over upper lip and loss of tooth, (ii) laceration over tip of nose, (iii) fracture of left forearm with multiple injuries on that hand and (iv) suspected fracture of ribs. In M.L.C. at Exhibit-36 it is mentioned that when X-ray was taken they found that there was no evidence of fracture of ribs. However, there was a fracture of both bones of left arm. Various case papers are produced to show that she received treatment on O.P.D. basis also. She was operated in respect of injury sustained to the forearm and she was advised to take rest and not to use the hand for many months.

4. The claimant examined Dr. Sudhakar Gulave, Medical Officer of Civil Hospital, Latur. His evidence shows that there was fracture of radius ulna and there was fracture of ribs also. His evidence show that after the discharge from Civil Hospital he gave treatment in his private hospital. He made the assessment of permanent disability and according to him due

to aforesaid injuries there is permanent disability to the extent of 45%. He has given opinion that due to these injuries she cannot do physical, labour work. Nothing could be brought on record to create probability that there was no such injury and the claimant is not suffering from permanent disability. The evidence shows that the certificate was issued on the basis of clinical and radiological examination.

5. The Tribunal has given compensation under heads like permanent disability, amounts spent on medicines, under the head of pain and suffering and under the head amount required for future medical treatment. Under all these heads compensation needs to be given. However, under head like loss of future income nothing is given by the Tribunal.

6. Even if it is presumed that there is little bit exaggeration in the extent of permanent disability it can be presumed that the earning capacity has dome down to much extent and she is not expected to do hard work. If she is a vegetable vendor she cannot lift the baskets or bags containing vegetables with same efficiency. This Court has no hesitation to observe that the earning capacity has come down at

least by 25%.

7. The accident took place in the year 2003 and so it can be presumed that the monthly income of the claimant was at-least Rs.3,000/-. Thus, there is monthly loss of Rs.750/- to the claimant. In view of the ratio of the case reported as ***AIR 2009 SC 3014 (1) (Smt. Sarla Verma and Ors. V/s Delhi Transport Corporation and Anr.)*** 11 needs to be adopted for calculation of future loss of income. The future loss of income comes to Rs.99,000/- (750 X 12 X 11). So, this Court holds that amount of compensation needs to be enhanced by Rs.99,000/-.

8. In the result, following order is made:

(i) Appeal is allowed. The compensation is enhanced by Rs.99,000/-. The interest at the rte of 9% p.a. is payable on the enhanced amount.

(ii) If the amount is deposited, it is to be disbursed as per the Award prepared by the Tribunal. The Award of the Tribunal is modified accordingly.

(iii) The Insurance Company still has a right to recover the entire amount from the owner, with interest at the same rate.

(T. V. NALAWADE, J.)

Dated: 12/01/2016.
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