

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

First Appeal No. 8 of 2004

* Bhanudas s/o Uttam Mokate,
Age 44 years,
Occupation : Nil,
R/o. Brahmni, Taluka Rahuri,
District Ahmednagar. **.. Appellant.**

Versus

- 1) Nishish Vipin Shah,
Age 45 years,
Occupation Vehicle Owner,
R/o 95/7, J.B. Nayar,
Andheri East, Mumbai - 59.
- 2) Jagdish Uttamchand Shah,
Age 43 years,
Occupation Vehicle Owner and
Driver,
R/o B/30, Adinath Society,
Pune-Satara Road, Swarget,
Pune - 37
(Appeal is dismissed against
respondent No.2 as per order
dated 17-2-2006)
- 3) United India Insurance Co. Ltd.
Through Manager, Ahmednagar
Branch, Ahmednagar. **.. Respondents.**

Shri. S.L. Bhapkar, Advocate, for the appellant.

Shri. P.S. Pawar, Advocate, for the respondent No.1.

Shri. A.B. Gatne, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 13th JANUARY 2016

JUDGMENT:

1) The appeal is filed by original claimant of Claim Petition No.800 of 1998 which was pending before the Claims Tribunal, Ahmednagar. The claimant had claimed compensation of Rs.4,00,000/- but the Tribunal has given compensation of Rs.2,25,700/-. So the claimant has challenged the decision on the point of quantum of compensation. Both the sides are heard.

2) It is the case of the claimant that in the accident he sustained injuries like compound fracture to right tibia, fibula, injury near patella and injuries to other parts of the body. It is his case that he was indoor patient from 24-7-1997 to 4-9-1997 and then he received treatment on OPD basis. It is his case that he was required to spend huge amount, of more than Rs.1.25 lakh on treatment and medicines.

3) The insurance company had contested the matter by filing written statement. It was upto the claimant to substantiate his claim. Before the Tribunal the claimant examined himself and gave evidence as per the aforesaid contentions. He has given evidence that even after the treatment he is not fully recovered. He has given evidence that at the relevant time he was aged 42 years and he was making income from three sources, by driving truck and by cultivating the land and also by selling milk. In the evidence, he tried to say that he was making monthly income of Rs.7000/- but now he cannot do any work due to the injuries sustained by him. Witness Gade is examined to prove that the claimant had aforesaid sources of income. One Mhase is examined to prove that the claimant was working as driver with a cooperative sugar factory. One Jadhav is examined to prove that the claimant was supplying 35 to 40 liters milk daily to the cooperative dairy till 24-7-1997. The accident took place on 24-7-1997. The owner of the truck is examined to prove that on his truck bearing No.MHQ 6010 the claimant was working as driver. Salary slip is also proved which shows that the claimant was being paid Rs.4000/- per month.

4) Dr. Madan Hardikar of Hardikar Hospital Pune is examined to prove the injuries and permanent disability. The evidence of this doctor shows that he is MS Orthopedic and he gave treatment to the claimant as indoor patient. His evidence shows that there was fracture to tibia right side upper third area. Operation was performed and implant was used. Even plastic surgery was done. His evidence shows that the claimant was then to visit the hospital for treatment on OPD basis. Even after the discharge he was receiving treatment till 30-5-1998 and he was indoor patient for one and half months. In view of the evidence of the doctor, due to injury there is permanent disability to the extent of 48% and it will not be possible to the claimant to drive four wheeler. Bills of medicines and treatment are proved in the evidence of this doctor.

5) The Tribunal has given compensation under heads like amount spent on medicine and treatment, amount spent for special diet and on attendant, loss of income during period of treatment (amount of Rs.5000/- under this head), under the head of pains and sufferings

and compensation under the head of loss of future income.

6) The Tribunal has held that monthly income of the claimant was Rs.4,000/- and the Tribunal has presumed that his age was 42 years. Though the Tribunal has held that the permanent disability was to the extent of 48%, compensation amount of Rs.1,20,000/- is given under the head of future loss of income.

7) If the Tribunal had presumed that there is loss of future income, the Tribunal ought to have calculated the amount on the basis of extent of loss of earning capacity, the income which the claimant was making in past and the age of the claimant. No basis is given for arriving at the conclusion that loss of future income is only of Rs.1.2 lakh.

8) Even if it is presumed that the claimant can do some other work though he cannot drive the truck, it can be said that in the past he was driving the truck and now he can do some other work. The permanent disability is to the extent of 48% but it can be presumed that earning capacity has come down at least by 30%. In view of nature

of evidence given on the source of income of the claimant this Court has no hesitation to hold that the monthly income of the claimant was Rs.4500/-. It has come down by 30% and so, this Court presumes that there is monthly loss of Rs.1500/-. In view of the age of the claimant which was 42 years at the relevant time, 14 can be applied as multiplier for calculating the loss of future income and it comes to Rs.2,52,000/- (Rs.1500 x 12 x 14). The Tribunal has granted Rs.1,20,000/- under this head and so this Court holds that the compensation needs to be enhanced by Rs.1,32,000/-.

9) In the result, following order is made :-

10) The appeal is allowed. Judgment and award of the Tribunal is modified to enhance the compensation by Rs.1,32,000/-. The claimant will be entitled to get interest at the rate of 9% per annum on the enhanced amount of compensation and it will be payable from the date of petition till the date of realisation. Prepare the award accordingly.

Sd/-
(T.V. NALAWADE, J.)

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