

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

First Appeal No. 1423 of 2004

* Vedu Maharu Suryawanshi,
Age 30 years,
Occupation: Agriculturist &
Labour,
R/o Dondaicha,
Taluka Sindkheda,
District Dhule. **.. Appellant.**

Versus

- 1) Rajendrasing Yogendrasing
Solanki,
Age 40 years,
Occupation: S.T. Driver,
R/o Dondaicha Depot,
Taluka Sindkheda,
District Dhule.
- 2) Maharashtra State Road
Transport Corporation,
Dhule Division, Dhule.
- 3) Taremsing Swarnswing,
Age 28 years,
Occupation Truck Driver &
Owner,
R/o A/24, Ulhasnagar, Thana,
District Thane.

(Appeal is dismissed as against
respondent No.3 vide Court
order dated 2-9-2008)

- 4) United India Insurance Co.
Ltd. through Branch Manager,
Dhule Division, Dhule. **.. Respondents.**

Shri. Jagdish K. Bansod, Advocate, holding for Shri. S.P. Brahme, Advocate, for appellant.

Shri. U.B. Shriram, Advocate, holding for Shri. D.S. Bagul, Advocate, for respondent No.2.

Shri. A.B. Gatne, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and award of Claim Petition No.699 of 1997 which was pending before the Claims Tribunal Dhule. The claim was filed for compensation in respect of injury sustained in a motor vehicle accident and the decision is challenged for getting enhancement of compensation. When amount of Rs. Three lakh was claimed, the Tribunal has awarded compensation of Rs.65,000/-. Both the sides are heard.

2) The accident took place on 20-3-1997. At the relevant time the age of the claimant was around 30 years. It is his case that by working as agricultural labour he was earning Rs.2000/- per month. It is his case that in

the accident he sustained fracture injuries to left and right legs and sustained injuries to the bones of chest and even after treatment he is not fully recovered. It is his case that due to injury he could not do labour work and so there is loss of future income.

3) The MSRTC filed written statement and contested the matter. It denied everything. The claim was made against the owner of other offending vehicle like truck also but the Tribunal has held the driver of the bus responsible for the accident.

4) The claimant has given evidence that in the accident he sustained injuries to his both legs. He sustained injuries to collar bone of right side. He has given evidence that he sustained injury to his chest and throat and he is suffering from permanent disability. Police papers are consistent with the case of the claimant. The police papers contain list of the patients who were referred to Government hospital after the accident and there is name of the claimant in the said list.

5) Disability certificate is issued by Civil Surgeon and it shows that there was fracture to right tibia fibula, there was injury to knees, there was fracture of clavicle bone and there is deformity due to this fracture. There was fracture to left leg also. Due to the injuries there was limp and the claimant has difficulty in sitting cross legged and in squatting. Due to the injuries there is permanent disability and its extent is given as 40%.

6) The aforesaid record was not disputed before the Tribunal. Though the injuries are of aforesaid nature, the Tribunal has presumed that earning capacity has come down only by 20%. Considering the age of the claimant as 35 years, the Tribunal has adopted 10 as multiplier for calculation of future loss of income. Meagre amount is given under the heads of pains, sufferings and amount spent on treatment. The Tribunal has held that the claimant is entitled to get Rs.65,000/- as compensation on the principle of fault.

7) The aforesaid approach adopted by the Tribunal is not correct. In view of the fact that the

claimant was doing labour work and he sustained injuries of aforesaid nature, this Court holds that the Tribunal ought to have presumed that the earning capacity has come down by 40%. Further, the Tribunal has committed error in holding that notional income per annum was only Rs.15,000/-. Notional income of Rs.15,000/- was fixed in the year 1994 and the accident took place in the year 1997. This Court holds that the claimant was certainly earning at least Rs.2,000/- per month at the relevant time. Due to the accident, the earning capacity has come down by 40% and there is monthly loss of Rs.800/- to the claimant. 16 can be adopted as multiplier for calculation of future loss of income in view of the age of the claimant and so amount of Rs.1,53,600/- could have been given under the head of loss of future income. Amount of at least Rs.10,000 can be given under the head of permanent disability and amount of Rs.10,000/- can be given under the heads like amount spent on conveyance, attendant, treatment etc. Thus, amount of at least Rs.1,73,600/- could have been given as compensation by the Tribunal. The amount awarded is certainly meagre and it cannot be called as just compensation.

8) In the result, following order :-

9) The appeal is allowed. The judgment and award of the Tribunal is modified to make the compensation as Rs.1,73,600/- (Rupees One Lakh Seventy Three Thousand and Six Hundred only) as compensation on the principle of fault. This amount is including the amount if any paid on principle "No Fault Liability". Interest at the rate of 9% is payable from the date of petition till the date of realization. Award is to be prepared accordingly.

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

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