

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 138 OF 2002

Kishan s/o. Rupaji Mutukule,
Age 35 years, Occu. Service
and Agriculture,
R/o. Umra Tal. Hingoli,
Dist. Hingoli

**....Appellant.
(Ori. Claimant)**

Versus

1. Shri. Premeshwar s/o. Maroti
Khedekar, Age 32 years,
Occu. Driver, R/o. WAdgaon Jahagir,
Tal. Hadgaon, Dist. Nanded.
2. Vishambar s/o. Ganpath Madaswar,
Age 32 years, R/o. C/o. Narayan
Dresses, Near Police Station, Himayat
Nagar, Tal. Hadgao, Dist. Nanded.
3. National Insurance Co. Ltd.,
Through Divisional Manager,
Hajari Chember, Aurangabad.

**....Respondents.
(Ori. Respondents)**

Mr. B.S. Kudale, Advocate for appellant.

Mr. P.V. Mandlik, Senior Counsel for respondent Nos. 1 and 2.

Mr. M.M. Ambhore, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.

DATED : 3rd March, 2016.

JUDGMENT :

- 1) The appeal is filed by original claimant against the judgment and award of Claim Petition No. 256/1996 (old),

M.A.C.P. No. 46/2000 (new), which was pending before the Claims Tribunal, Hingoli. The claim was filed under section 166 of Motor Vehicle Act by appellant in respect of injuries sustained by him in motor vehicle accident and the appeal is filed by him as he is not satisfied with the quantum of compensation. Both the sides are heard.

2) The accident took place on 13.9.1996. It is the case of claimant that he was aged about 35 years at the relevant time and by doing private service and by cultivating the land, he was making income of more than Rs. 3,000/- per month. The jeep had given dash to the motorcycle of the claimant and in the accident, he lost his right leg above knee. He had claimed compensation of Rs. 8.5 lakh from the owner, driver and Insurance Company.

3) The owner and Insurance Company filed written statement and contested the matter.

4) To substantiate the claim, the claimant examined himself and gave evidence which is as per aforesaid contentions. He produced discharge card at Exh. 31 issued by Government Medical College and Hospital, Nanded and it shows that he was

indoor patient in this hospital and he was required to take follow up treatment. He has produced a certificate of his salary which is exhibited as Ex.32. Though the employer of the claimant was not examined, it appears that the salary certificate was exhibited as it was not disputed. Similarly, the bill issued by one private hospital is at Exh. 33 and it is for Rs. 21,645/-. There are many bills of medicines at Exh. 34. The 7/12 extracts in respect of his agricultural lands are produced at Exhs. 38 to 41. Licence issued to his so called employer, zerox copy of it is also produced.

5) Claimant has lost right leg in the accident. In view of the aforesaid record and substantive evidence, this Court holds that it can be easily presumed that in the year 1996, he was getting atleast Rs. 3,000/- per month. Due to nature of injury, his earning capacity has come down and it can be safely presumed that 50% earning capacity is lost. Thus, there is monthly loss of Rs. 1500/- to the claimant. Though in the petition, he has given his age as 35 years, in view of the other record, this Court holds that 13 can be adopted as multiplier for calculation of loss of future income. Future loss of income comes to Rs. 2,34,000/- (1500 x 12 x 13). This Court holds that amount of Rs. 50,000/- can be given under the head of permanent disability, amount of Rs. 30,000/- can be given under the head amount spent on

medicines, treatment, conveyance, diet and amount of Rs. 5,000/- can be given under the head of pain and suffering. Thus, total amount of Rs. 3,19,000/- needs to be given to the claimant as a just compensation.

6) The Tribunal has awarded compensation of Rs. 2.5 lakh only. The Tribunal has not calculated the compensation by using any procedure on the basis of extent of permanent disability and approximate amount of Rs. 1.75 lakh is given under that head. The amount of Rs. 15,000/- is awarded under other heads and amount of Rs. 25,000/- is given under the head of amount spent on medicine. Even when it is not disputed that the claimant lost his right leg, observations are made that claimant ought to have examined doctor to prove that his earning capacity has come down.

7) The learned counsel for Insurance Company placed reliance on the case reported as **2011 (7) ALL MR 800 (S.C.) [Govind Yadav Vs. The New India Insurance Company Limited]**. In this case, the Apex Court has made observation that when there is no cogent evidence about earning, the amount of minimum wages payable to worker can be taken in to account. There cannot be dispute over this proposition. The

learned counsel for Insurance Company has produced the schedule prepared under the Minimum Wages Act, 1996 to show that unskilled labour in village was to get hardly Rs. 1100/- per month as minimum wages at the relevant time. In the present matter, there is specific evidence about the salary and further, there are 7/12 extracts showing that the claimant was having agricultural land from which also by personally cultivating he could have get sufficient income. The salary certificate is exhibited and in view of these circumstances, it can be safely presumed that his monthly income was around Rs. 3,000/-. Thus, the case cited for Insurance Company, respondent cannot be used in the present case. In the result, following order is made.

ORDER

The appeal is allowed. The judgment and award of the Tribunal is modified to make the total compensation as Rs. 3,19,000/- (Rupees three lakh nineteen thousand). Interest at the rate of 9% will be payable on the enhanced amount from the date of petition till the date of realization.

[T.V. NALAWADE, J.]

ssc/