

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

First Appeal No.170 of 2002

* Arvind Ramkrishna Patil,
Age 49 years,
Occupation : Nil,
R/o Ganj Golai, Latur. **.. Appellant.**

Versus

- 1) Suresh Kishanrao Chitewar,
Age 35 years,
Occupation : Driver,
R/o C/o Ramesh Ramkishan Niraj,
Market Yard Gangakhed,
Taluka Gangakhed,
District Parbhani.
- 2) Ramesh Ramkishanrao Niraj,
Age 45 years,
Occupation : Business,
R/o Market Yard, Gangakhed,
Taluka Gangakhed,
District Parbhani.
- 3) United India Insurance Co. Ltd.
Branch Parbhani,
Through its Branch Manager,
Branch Office, Hanuman Chowk,
Latur, District Latur. **.. Respondents.**

Shri. B.R. Kedar, Advocate, for appellant.

Shri. J.R. Patil, Advocate, for respondent No.2.

Shri. S.V. Kulkarni, Advocate, for respondent No.3.

With

First Appeal No.173 of 2002

* Sunil s/o Pandurang Agrawal,
Age 31 years,
Occupation : Business,
R/o Market Yard, Jalna.
Taluka and District Jalna. .. **Appellant.**

Versus

- 1) Suresh Kishanrao Chitewar,
Age 35 years,
Occupation : Driver,
R/o C/o Ramesh Ramkishan Niraj,
Market Yard Gangakahed,
Taluka Gangakahed,
District Parbhani.
- 2) Ramesh Ramkishanrao Niraj,
Age 45 years,
Occupation : Business,
R/o Market Yard, Gangakhed,
Taluka Gangakhed,
District Parbhani.
- 3) United India Insurance Co. Ltd.
Branch Parbhani,
Through its Branch Manager,
Branch Office, Hanuman Chowk,
Latur, District Latur. .. **Respondents.**

Shri. B.R. Kedar, Advocate, for appellant.

Shri. J.R. Patil, Advocate, for respondent No.2.

Shri. S.V. Kulkarni, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 29th FEBRUARY 2016

JUDGMENT:

1) Both the proceedings have arisen out of the same accident. The appellant from first proceeding, Arvind had filed Claim Petition No.528/1997 and the appellant from other appeal namely Sunil had filed Claim Petition No.529/1997 before the Claims Tribunal Latur. The appeals are filed to challenge the quantum of compensation. Both the sides are heard.

2) Arvind has given evidence that in the accident he sustained injuries to his both legs which were fracture injuries and he was indoor patient for about 48 days for the treatment. He has given evidence that he was required to spend Rs.40,000/- for treatment and medicines. He has given evidence that in the past he was working as driver but due to the injuries there is permanent disability and he cannot work as a driver. He has given evidence that in the past he was earning Rs.2000/- per month but due to the injuries he cannot

make any income. The MLC and disability certificate are not disputed and so they are exhibited by the Tribunal. No doctor was examined. The MLC shows that fracture was noticed by the doctor to the tibia, fibula. The disability certificate shows that there was fracture to both left and right legs. There was fracture of tibia left and there was fracture of shaft right and operation was performed on right leg. Due to the injuries there is stiffness in left knee and ankle and the extent of permanent disability is mentioned as 45%. No discharge card is produced to show the period spent in hospital as indoor patient.

3) The claimant Arvind has given his age as 45 years i.e. he had crossed the age of 45 years at the relevant time. As no doctor is examined it is difficult to believe that he cannot drive any vehicle. Only due to aforesaid circumstances and the nature of injuries it can be presumed that the earning capacity has come down by 50%. the Tribunal has held that monthly income of the claimant was Rs.2000/-. Thus there is monthly loss of Rs.1000/-. In view of the age of the claimant, 13 can be

adopted as multiplier for calculation of future loss of income and that amount comes to Rs.1,50,000/- (1000x12x13). In view of nature of injuries, this Court holds that the claimant must have spent at least Rs. 40,000/- on treatment, medicines, attendant, conveyance etc. Bills of medicines and treatment of around Rs.37000/- are produced though they are not proved. Under this head amount of Rs.40,000/- could have been granted as compensation. Similarly, Rs.30,000/- can be granted under the head of pains, suffering and permanent disability. Thus, total amount of compensation comes to Rs.2.2 lakh. The Tribunal did not attempt to calculate the loss of earning on the basis of aforesaid circumstances and compensation is given by doing some guess work. It is observed that consolidated sum of Rs.40,000/- can be given under the head of loss of future income. Total amount of only Rs. one lakh is awarded as compensation. So, the judgment needs to be modified to make the compensation as Rs.2.2 lakh.

4) Claimant Sunil from second proceeding has given evidence that he sustained injuries to both his legs

and hip etc. He has given evidence that he was indoor patient for about one and half months and he has undergone one operation. In this case also record like MLC, disability certificate which are at Exhibits 38 and 39, is not disputed. The record shows that there was dislocation of right hip, there was CLW over scalp and there was bilateral fracture to tibia. The extent of disability is said to be 40%. In this case the claimant has not produced record like discharge card to show that he was really indoor patient for long time. Some bills of medicines and treatment are produced. Those bills are not proved.

5) The claimant Sunil has given evidence that in the past he was working as commission agent and he was making some income. No record at all is produced in respect of the income. Though he tried to say that there is shortening of leg there is no mention in the aforesaid record of shortening of leg. Even if it is presumed that he was doing some work like agent in the area of Agricultural Produce Marketing Committee it can be said that his income was Rs.2000 per month. After the accident the

earning capacity of the claimant must have come down to some extent as his movements must have been affected. This Court holds that the earning capacity has come down by 25%. Thus there is loss of income of Rs.500/- per month. In view of the age of the claimant this Court holds that 17 can be adopted as multiplier for calculating the future loss of income. The amount of future loss of income comes to Rs.1,02,000/-. This Court holds that amount of Rs.15,000/- can be given towards amount spent on treatment and medicine as some receipts are produced though they are not proved. This Court holds that under the head of pains, suffering and permanent disability, Rs.10,000/- can be given. Thus, total amount of Rs. 1,27,000/- can be given in this case. The Tribunal has awarded compensation of Rs.80,000/- in this case. So, the judgment and award needs to be modified to make the total compensation as Rs.1,27,000/-.

6) In the result, following order is passed.

7) First Appeal No.170 of 2002 is allowed. The judgment and award of the Tribunal is modified to make

the total compensation as Rs.2.2 lakh (Rupees Two lakh and Two Thousand only) which is inclusive the amount which must have been paid on the principle of No Fault. Interest at the rate of 9% is payable on the amount from the date of petition till the date of realization. Award to be prepared accordingly.

8) First Appeal No.173 of 2002 is allowed. The judgment and award of the Tribunal is modified to make the total compensation as Rs.1.27 lakh (Rupees One Lakh and Twenty Seven Thousand only) which is inclusive the amount which must have been paid on the principle of No Fault. Interest at the rate of 9% is payable on the amount from the date of petition till the date of realization. Award to be prepared accordingly.

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

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