

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

First Appeal No.334 of 2002

* Laxman Nana Ghule,
Age 39 years,
Occupation :Labourer,
and Tractor Driver,
R/o Rahuri, Taluka Rahuri,
District Ahmednagar. **.. Appellant.**

Versus

- 1) Anilkumar Darshanlal Ahuja,
Age Major, Occu: Driver,
R/o Jamkhed, Taluka Jamkhed,
District Ahmednagar.
- 2) Sanjay Vidhnu Khetre,
Age 30 years,
Occupation : Driver,
R/o Jamkhed, Taluka Jamkhed,
District Ahmednagar.
- 3) The Oriental Insurance Co. Ltd.
Shrigonda, Dist. Ahmednagar. **.. Respondents.**

Shri. D.G. Nagode, Advocate, for appellant.

Shri. M.M. Patil (Beedkar), Advocate, for respondent
No.2.

Shri. S.M. Godsay, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 13th JANUARY 2016

JUDGMENT:

1) The appeal is filed by the original claimant of Claim Petition No.1056/1994 which was pending before the Claims Tribunal, Ahmednagar. When compensation of Rs.1,00,000/- was claimed in respect of injuries sustained by the claimant in motor vehicle accident, the Tribunal granted amount of Rs.10,000/- as compensation on the principle of fault. Both sides are heard.

2) It is the case of the claimant that he sustained injuries to the nose, fracture injury to right hand and injuries to other parts of his body. It is his case that he was required to spend on treatment and medicine. It is his case that in the past by doing labour work and by working as truck driver he was earning Rs.30 to 40 per day and his earning capacity has come down due to injuries sustained by him. He was 32 years of age on the date of the petition.

3) The owner and insurance company had contested the matter. As the present proceeding is only on the point of quantum, it is upto the claimant to show

the entitlement to get more amount than the amount awarded by the Tribunal.

4) To substantiate the claim, the claimant has examined himself. His evidence is as per the aforesaid contentions. His evidence shows that he was indoor patient in the hospital and one operation was performed on his foot due to fracture injury sustained by him. He has given evidence that he cannot do work as labour due to injuries sustained and his earning capacity has come down.

5) One person died in that accident and the claimant sustained grievous injuries and so crime was registered for offences punishable under sections 304-A, 279, 338 of the Indian Penal Code.

6) The claimant examined one Dr. Radhakrishna Jadhav who was working as RMO in Civil Hospital, Ahmednagar. Evidence of this doctor shows that the claimant was indoor patient from 26-12-1991 to 21-1-1992 and this doctor had examined the claimant. He had also

seen the X-rays of pelvis and other injuries. He has given evidence that the claimant had fracture of pelvis and fracture of second and third toes of right foot. He has given evidence that due to the injuries there is permanent disability to the extent of 18%. The certificate is duly proved in his evidence. In the cross-examination it is brought on record that he is not orthopedic surgeon. However, he has given evidence that as per the procedure, disability certificate is issued by the RMO. His evidence shows that one Dr. Kokare, Orthopedic Surgeon had examined the claimant. In view of these circumstances and the aforesaid nature of evidence, it needs to be presumed that final certificate was given on the basis of entire record. Disability certificate is issued by the civil hospital. There is record at Exhibit 46 and it is consistent with the aforesaid evidence.

7) One more disability certificate was produced by the claimant but he did not examine the doctor to prove the said certificate. It appears that he had lost few teeth in the accident and for that disability certificate was issued.

8) The decision of the Tribunal shows that the Tribunal refused to believe the evidence of the RMO. The Tribunal has held that there is possibility that the injured is fully recovered. The Tribunal has considered the circumstance that even on the date of the deposition claimant was holding valid driving licence. In view of these circumstances, the Tribunal awarded compensation of only Rs.10,000/- as lump sum compensation.

9) The aforesaid approach of the Tribunal was not correct. This Court has no hesitation to hold that the aforesaid evidence could have been accepted and relied upon by the Tribunal. Even if it is presumed that extent of permanent disability is only 18%, the Tribunal ought to have calculated the loss of future income. It can be presumed that the monthly income of the claimant was Rs.1000/- and due to the disability the earning capacity has come down by 18%, there is loss of Rs.180/- per month. Considering the age of the claimant, 16 can be used as multiplier for calculating future loss of income. Thus amount of future loss of income comes to Rs.34,560/-. In view of nature of injuries this Court holds

that under the head of permanent disability, amount of Rs.25,000/- can be given to the claimant. Amount of Rs.5000/- can be given under the head of loss of earning during the period of treatment and amount of Rs.10,000 can be given under the head of pains and sufferings etc. Thus total compensation comes to Rs.74,560/-. Thus the judgment of the Tribunal needs to be corrected.

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

11) The appeal is allowed. The judgment and award of the Tribunal is modified to make the total compensation as Rs.74,560/- (Rs. Seventy Four Thousand Five Hundred and Sixty only) which is inclusive the amount which could have been given under "no fault liability". Interest at the rate of 9% will be payable. If some amount is already paid by the insurance company, after deducting that amount, interest will be payable on the remaining amount 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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