

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

FIRST APPEAL NO. 1449 OF 2009
WITH
CIVIL APPLICATION NO. 6840 OF 2009

New India Assurance Company Ltd.,
Through its Divisional Office,
Aurangabad, Mahesh Auto
Compound, Adalat Road,
Aurangabad.

....Appellant.

(Ori. Resp. 3)

Versus

1. Abasaheb s/o. Punjaram Bade,
Age 21 years, Occu. AGri. & Milk
supply, R/o. Kekat Jalgaon,
Taluka Paithan, District
Aurangabad.
2. Kantilal s/o. Bhagwandas Sisodiya,
Age Major, Occu. Business,
R/o. Vihamandava, Taluka Paithan,
District Aurangabad.
3. Santosh s/o. Kalyanrao Bane,
Age Major, Occu. Driver,
R/o. C/o. Kantilal Bhagwandas
Sisodiya, R/o. Vihamandava,
Taluka Paithan, District
Aurangabad.
(Deleted as per Court's order
dated 25.11.2009)

....Respondents.

(Resp. 1 - Ori. Claimant, Resp. 2
& 3 - Ori. Resp. 1 & 2)

Mr. S.G. Chapalgaonkar, Advocate for appellant.

Mr. P.B. Khedkar, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 22nd February, 2016.

JUDGMENT :

1) The appeal is filed by the Insurance Company against the judgment and award of Claim Petition No. 593/2007, which was pending before the Claims Tribunal, Aurangabad. The Tribunal has held Insurance Company liable to pay compensation and indemnify the owner of the offending vehicle. Both the sides are heard.

2) The accident took place on 26.6.2007 within local jurisdiction of Pachod Police Station, Tahsil Paithan, District Aurangabad. At the relevant time, claimant was aged about 19 years. He was pillion rider on motorcycle. It is his case that due to rash and negligent driving of Indica Car bearing No. MH-20/AG-1226, accident took place. It is his case that he sustained fracture injuries to his right leg and injuries to other parts like knee and even after treatment, he is not fully recovered. It is his case that he was required to spend more than Rs. 1.5 lakh on treatment and medicines, but he is suffering from permanent disablement. It is the case of claimant that in the past, by cultivating family land and by doing milk business, he was earning Rs. 15,000/- per month and due to injuries, he cannot do any work and he has lost earning capacity.

3) Respondent Nos. 1 and 2, driver and owner of the

car, filed written statement and contested the matter. They denied everything. Alternatively, they contended that the car was insured with respondent No. 3 - Insurance Company and Insurance Company is bound to indemnify the owner. Insurance Company contested the matter by filing written statement. It also contended that there was no fault of driver of the car and accident took place due to fault of driver of motorcycle.

4) To substantiate the claim, the claimant examined himself before the Tribunal and his evidence is as per aforesaid contentions. He relied on copies of police papers. Copy of F.I.R. shows that claimant had given report and the crime was registered against the driver of Indica car. Copy of spot panchanama is exhibited and it shows that severe dash was given to the motorcycle and the riders were virtually thrown away due to dash. Police blamed the driver of car for the accident. In view of the direct evidence of the claimant and aforesaid record, it was necessary for respondent Nos. 1 and 2 to give evidence in rebuttal. But, no such evidence is given. In view of these circumstances and unrebutted evidence, the Tribunal has held the driver of the car responsible for the accident and so, there is no possibility of interference in this finding given by the Tribunal.

5) On the point of quantum of compensation, evidence of the claimant is as per the aforesaid contentions. He has examined doctor, who had issued disability certificate, Exh. 52. In police papers also, it is mentioned that claimant sustained grievous injury in the accident. M.L.C. at Exh. 34 shows that there was compound fracture of lateral condyle right with dislocation right knee joint, there was swelling to right knee and there was bleeding from this injury. Due to this injury, the claimant was not able to walk or stand. The disability certificate at Exh. 52 shows that due to the aforesaid injury, the flexion of the right knee joint was affected and the extent of permanent disability is 25%. The other record of treatment, which is exhibited, is consistent with the evidence of claimant and the doctor. One more certificate at Exh. 53 is proved to show that the claimant was to undergo one more operation and for that, it was necessary for him to spend atleast 65,000/-.

6) The 7/12 extracts in respect of the land which was standing in the name of claimant are produced. They show that he was having share in atleast four lands and his father was also having share in three lands. There is either a well or bore well in these lands. Crop like cotton was taken in these lands.

7) The bills of medicines and treatment of Rs. 71,000/-

are produced and proved by the claimant. The amount in respect of which bills are there is considered and awarded as compensation by the Tribunal. The Tribunal has presumed that the earning capacity has come down by 25%. The age of the claimant was 22 years at the relevant time and the Tribunal has presumed that monthly income of the claimant was atleast Rs. 3,000/-. By presuming that earning capacity has come down by 25%, the Tribunal has used 17 as multiplier for calculation of loss of future income and the amount of Rs. 1.53 lakh is given under the head of loss of future income. Amount of Rs. 25,000/- is given under the head of pain and suffering and the amount of Rs. 5,000/- is awarded as compensation under the head of amount spent on conveyance. Thus, meager amount of Rs. 2.55 lakh is awarded as compensation when the flexion of the right leg at knee portion is affected. This Court holds that it is not possible to interfere in the decision of the Tribunal on this finding also.

8) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/