IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 817 of 2006

* New India Assurance Company Ltd
and having its registered and head
Office at 87 New India Assurance
Building, Bombay Branch at
Ahmednagar, Divisional Office at
Ajay Engg. Build., Adalat Road,
Aurangabad through its
Assistant Divisional Manager and
Constituted attorney
Mr. Hiralal s/o Namdeo Vispute,
Age about 54 years. .. **Appellant.**

Versus

1) Prakash Harishchandra Nikam,
Age 45 years,
Occupation : Daily Saving Agent
and Service,
R/o Room No.3415, Chawl No.118,
Kannamwarnagar No.2 Vikroli (E)
Mumbai 400 083.

2) Suresh Maruti Ghorpade,
Major, Occupation: Driver,
R/o Guruwar Peth, Karad,
Taluka Karad, District Satara.

3) Abid Sattar Waikar,
Age Major, Occu: Business,
R/o 1481 Yamai Peth,
Uran-Islampur,
Taluka Walwa Islampur,
District Sangli.

4) United India Insurance Co. Ltd.
Market yard Branch Kisan
Kranti Building, Dist. Ahmednagar.

Through Sr. Divisional Manager,
Vinayakrao Patil Chowk,
Osmanpura, Aurangabad.

5) Balkrishna Krishanath Salunke,
Major, Driver,
Ramdatta Building,
Room No.324, Ist Floor,
Kari Road, Mumbai - 12.

6) Nirmala Shrirang Bhosale,
Major, Business,
115 Kamgar Nagar 2,
New Prabhadevi Road,
Mumbai - 4000 25. .. **Respondents.**

Shri. V.N. Upadhye, Advocate, for the appellant.

Shri. Vivek Kaydal, Advocate, holding for Shri. T.M. Tandale, Advocate, for respondent No.1.

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

With

First Appeal No. 840 of 2006

* United India Insurance Co. Ltd.
Through its Divisional Manager
And authorised representative
and signatory, Ahmednagar
Divisional Office, Kisan Kranti
Building, Ahmednagar,
District Ahmednagar. .. **Appellant.**

Versus

1) Prakash Harishchandra Nikam,
Age 51 years,
Occupation : Daily Savings Agent
and Taxi Driver,
R/o Room No.3415, Chawl No.118,
Kannamwarnagar No.2 Vikroli (E)
Mumbai - 83.

2) Suresh Maruti Ghorpade,
Age Major, Occupation: Driver,
R/o Guruwar Peth, Karad,
Taluka Karad, District Satara.

3) Abid Sattar Waikar,
Age Major, Occu: Business,
R/o 1481 Yamai Peth,
Uran-Islampur,
Taluka Walwa Islampur,
District Sangli.

4) Balkrishna Krishnath Salunke,
Age Major, Occupation Driver,
R/o Ramdatta Building,
Room No.324, First Floor,
Kari Road, Mumbai - 12

5) Nirmala Shrirang Bhosale,
Age Major, Occupation Business,
R/o 115 Kamgar Nagar 2,
New Prabhadevi Road,
Mumbai - 4000 25.

6) The New India Assurance
Company Ltd., through its
Divisional Manager, Kings Road,
Abat Building, Opp. Deepali Talkies,
Ahmednagar. .. **Respondents.**

Shri. A.B. Gatne, Advocate, for the appellant.

Shri. Vivek Kaydal, Advocate, holding for Shri. T.M. Tandale, Advocate, for respondent No.1.

Shri. V.N. Upadhye, , Advocate, for respondent No.6.

CORAM: T.V. NALAWADE, J.

DATE : 7th JANUARY 2016

JUDGMENT:

1) Both the appeals are filed to challenge the judgment and award of Claim Petition No.486 of 1999 which was pending before the Chairman, Claims Tribunal, Ahmednagar. Two vehicles were involved in the accident and the Tribunal has held that drivers of the two vehicles were equally responsible for the accident and so the owner of each vehicle is held liable to the extent of 50%. The decision is challenged by both the Insurance Companies. Both the sides are heard.

2) The accident took place on 6-12-1998 on Nagar – Manmad road. The claimant was travelling in mini bus bearing No. MCU-9751. The bus was owned by original respondent No.5 – Smt. Nirmalabai and it was insured with National Insurance Company Ltd. It is contended that there was collision between this bus and the truck bearing No.MH-10-A-9186 which had come from opposite

direction. The truck was owned by original respondent No.2 – Abid Sattar and it was insured with respondent No.3 – United Indian Insurance Company. In the claim petition the claimant had blamed the driver of the truck for the accident.

3) It is the case of the claimant that he sustained grievous injuries in the accident and due to the injuries he lost right arm and right eye. He sustained injuries to his head also. It is the case of the claimant that in the past he was working as Taxi Driver in Mumbai and he was earning Rs.4500/- per month. He contended that he was working as pigmy agent also of one credit society and he was earning Rs.7000/- per month by working as pigmy agent. It is the case of the claimant that due to the injuries he cannot do any work and so there is loss of income to him.

4) He contended that he was required to spend huge amount on treatment and he was indoor patient at least in three hospitals where operations were performed on him. It is his case that he was required to spend Rs.1.5 lakh on treatment and medicines and there is loss of more

than Rs.24 lakhs due to loss of earning. He had claimed compensation of Rs.18 lakhs.

5) Both the appellants, Insurance Companies, had filed written statements and had contested the matter. They denied the aforesaid contentions. They contended that the claimant must prove each and every contentions made by him. The fact of the accident and the fact of the insurance were, however, admitted. Each appellant tried to blame it on the driver of other vehicle.

6) Before the Tribunal only the claimant gave evidence. In substantive evidence the claimant has stated that it was fault of the driver of the truck which came from opposite direction. It was submitted by him that it is up to the Court to decide as to who was rash and negligent and so he had impleaded both owners as parties to the proceeding. The claimant was cross-examined by the counsel of the respondent No.3 – Insurance Company but nothing could be brought on record to prove that there was no fault on the part of the truck driver. The counsel for the insurance company of the bus, respondent

No.6 did not cross-examine the claimant.

7) The claimant examined one Pawar, ASI, who had made investigation. His evidence and the evidence of the claimant show that police filed charge sheet against the drivers of both the truck and the luxury bus. Pawar was not eye witness to the accident though he has tried to say that the bus was attempting to overtake one truck at the relevant time. Some portion of the FIR given by Pawar was confronted to him but not much can be made out from that portion as Pawar was not eye witness to the accident.

8) Police papers are not disputed. Copy of spot panchanama (Exhibit 56) shows that two vehicles had dashed against each other but the dash was of back sides of drivers' side. Point of impact on the road is not mentioned in the spot panchanama. The accident took place in day time. As the drivers sides of both the vehicles dashed against each other at back side, there is clear probability that there was error of judgment of the drivers of both the vehicles. Both the vehicles were found at 110

meters distance from each other after the accident. On the basis of the investigation made, police blamed drivers of both the vehicles. Though the claimant tried to blame only the driver of the truck, he was occupying the seat which was on extreme rear side of the bus. This circumstance cannot be ignored. The Insurance Companies could have examined the drivers of both the vehicles but no such attempt was made. In view of these circumstances, the trial Court has held that drivers of both the vehicles are equally responsible This Court holds that it is not possible to interfere in the finding given on this point by the Tribunal.

9) The claimant has given evidence that due to the injuries he lost right hand as the hand was required to be amputated from shoulder joint. He has given evidence that he lost vision of right eye. He has given evidence that operations were performed on his skull, as there was fracture of skull. He has given evidence that he was first admitted in Pravara Hospital, Loni, Ahmednagar, he was then shifted to one hospital from Vikroli, Mumbai and then to J.J. Hospital. Record is produced like MLC given by

Pravara Hospital (Exhibit 40), the case papers and CT scan report (Exhibit 41) and Disability Certificate issued by Dr. Yadkikar, Orthopedic Surgeon Ahmednagar (Exhibit 85).

10) The MLC shows that there was injury to right eye which was grievous in nature, there was injury to right temple bone which was grievous in nature. There was injury to right shoulder which was grievous in nature. There was amputation due to injury to right arm. There was grievous injury to front portion of head and there was some injury to left eye also. There was fracture of bone of right arm and the right arm was required to be amputated. There was fracture to skull bone. There was cerebral oedema. There was fracture of bone of face also. Due to these injuries it is held that eye sight of right eye is reduced to less than 20% permanently. This opinion is given in Disability Certificate on the basis of opinion obtained from Ophthalmologist Dr. Kingaonkar. Due to amputation of right shoulder, percentage of permanent disability is stated to be 70%. Due to disfugeration of face permanent disability is stated to be of 30% and due to

fracture injuries to the skull permanent disability is said to be of 10%. Record of all three hospitals is consistent. Learned counsel for the insurance company submits that doctor is not examined and so this record could not have been relied. This submission is not acceptable as the record shows that giving of exhibits to the documents was not objected. Due to this circumstance there was no reason for the claimant to call these doctors. Further there is record like discharge certificate which is exhibited. This Court holds that this record is sufficient to prove that the claimant has lost his right upper limb in the accident and he has lost sight of right eye to most extent.

11) The claimant has given evidence that he was working as taxi driver in Mumbai and he was making income of Rs.4000/- to 4500/- per month. He has given evidence that he was working as pigmy agent and he was earning Rs.7000 to Rs.7500/- per month. Certificate issued by credit society is produced on the record to show that he was working for that society and one witness Ashok Mane is examined in that regard. In his evidence, extract of loan amount in respect of loan given to the

claimant is also produced and it shows that loan of around Rs.1.5 lakh was given as personal loan. This amount was used for his treatment. Learned counsel for the appellant submitted that no extract of amount of the commission is produced and due to that it cannot be believed that the claimant was really working as pigmy agent and he was earning more than Rs.7000/- per month from that occupation. This Court holds that there is no reason to disbelieve the claimant on this point in view of the evidence of the employee of the society and the record of loan produced by it.

12) When the claimant was claiming that he was working as taxi driver and he was making income as taxi driver also, the Tribunal has not believed the claimant in respect of his case of such occupation. The Tribunal has not seen the relevant record produced by the claimant. This Court has carefully gone through the record of the Tribunal and it shows that copy of driving license was at Exhibit 38 showing that he was holding licence to drive light motor vehicle and it was valid upto the year 1998. Copy of taxi permit was produced at Exhibit 39 and it was

issued to one Abid Sattar in the year 1996. Even badge of taxi driver was produced by the claimant before the Tribunal. Unfortunately this record is not considered by the Tribunal. It can be said that the claimant was making income from the aforesaid two sources. The Tribunal has held the monthly income as Rs.8000/-. Surprisingly the Tribunal has deducted one-third amount from the income on the count of personal expenses when it is injury claim. This Court has no hesitation to observe that the claimant is not expected to work as taxi driver due to nature of aforesaid injuries and so there is total loss of income from at least one source. Due to aforesaid injuries more amount could have been granted due to loss of right upper limb and due to loss of one eye. Under these heads nothing is awarded by the Tribunal.

13) Learned counsel for the insurance company submitted that when there was no record of medical expenses of Rs.1.5 lakh, the Tribunal has held that the claimant is entitled to get such amount. Though it is true that the bills are hardly of Rs.10,000/- there is record to show that the claimant was indoor patient at least in

three hospitals. The claimant must have spent on medicines, attendant, conveyance, special diet etc. The circumstance that he was required to take loan of Rs.1.5 from one society speaks loud about his needs at the relevant time. In any case, huge amount could have been given under the heads of loss of right upper limb, loss of right eye. This Court has no hesitation to observe that much more amount than the amount awarded by the Tribunal could have been given. The amount of Rs.5,68,000/- is meagre amount if the aforesaid injuries are considered and the amount which the claimant must have spent on treatment, medicines, attendant, conveyance is considered. Thus there is no possibility of inference in the quantum also.

14) In the result, both the appeals are dismissed.

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

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