

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1297 OF 2010

Deepak s/o. Narsaya Mudiraj,
Age : 40 years, Occu : Service,
R/o. Bhoipura, Hingoli,
Taluka & District Hingoli.

... Appellant

Versus

1. Alimoddin s/o. Amiruddin,
Age : 45 years, Occu : Truck owner,
(MH-29/6904),
R/o. Ward No. 20 (New),
Pusad, Taluka Pusad,
District Yeotmal.

2. The Oriental Insurance Co. Ltd.,
Yeotmal through its Branch
Daulat Building, Shivaji Road,
Parbhani.

... Respondents

.....
Mr. Nikhil S. Jaju h/f Mr. A. S. Bajaj, Advocate for the appellant
Mr. M. K. Goyanka, Advocate for respondent No. 2
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2016

JUDGMENT :-

1. Being aggrieved by the judgment and award dated 19.12.2002 passed by learned Member, M.A.C.T. Hingoli in M.A.C.P. No. 263 of 2000, the original claimant has preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as under:-

a) On 2.1.1999, the appellant-claimant was travelling in a truck bearing registration No. MH-29-6904 from village Gunj towards Pusad. One Pundlik, who was driver of the said truck, was driving the truck in high speed and in rash and negligent manner. Constituently, on way, the said truck dashed against a standing tree and turned turtle. In consequence of which, the appellant-claimant had sustained severe injuries. He was shifted to Rural Hospital, Pusad. He had also taken treatment in a private hospital at Pusad. He was indoor patient in the hospital for quite some period. He had undergone surgery twice. The appellant-claimant was required to incur medical expenses and hospital charges etc. Moreover, injuries sustained by the appellant-claimant has resulted into permanent disability to the extent of 50%. Accordingly, the claimant filed M.A.C.P. No. 263 of 2000 before the M.A.C.T., Hingoli for grant of compensation under various heads.

b) Respondent No.1 has not filed his written statement and therefore, the claim petition ordered to be proceeded without his written statement. Respondent No.2-insurer has filed its written statement and thereby denied that the accident took place due to rash and negligent driving of the truck driver and also denied that the appellant-claimant has sustained injuries and incurred medical expenses for his treatment. It is further contended by respondent

No.2 that driver of the truck allowed passengers to board the said goods vehicle and accepted fare and therefore, there is breach of condition of policy and the respondent-insurer is not liable to pay compensation. It is also contended that driver of the truck was not holding valid and effective driving licence at the time of accident.

c) Learned Member of the M.A.C.T., Hingoli, by it impugned judgment and award dated 19.12.2002, partly allowed the claim petition and thereby directed respondent Nos. 1 and 2 to pay the compensation of Rs.45,000/- to the claimant, jointly and severally, including the compensation towards no fault liability, with costs and interest. Hence, this appeal is preferred by the original claimant to the extent of quantum.

d) It is not disputed that the accident took place on 2.1.1999 on Gunj-Pusad road and the said accident had taken place due to rash and negligent driving on the part of driver of the truck bearing registration No. MH-29-6904. Since respondent-insurer has not preferred any appeal nor filed any cross objection, it is not disputed that the owner of the truck has not committed any breach of policy.

3. Learned counsel for the appellant submits that prior to the accident, the claimant was working as a security guard in

M.S.R.T.C., and after the accident, he tendered resignation to the Corporation for the reason that he is not able to continue with the work as per the duties assigned to him. The appellant-claimant has not voluntarily submitted his resignation but on account of permanent disablement sustained by him, he was forced to tender resignation, though on his own. In view of this, there is total loss of income. The appellant-claimant was earning Rs.3980/- p.m. as salary and on account of permanent disablement to the extent of 50%, he has lost the said income. The permanent disablement, though to the extent of 50%, the appellant-claimant has lost his earning capacity to the extent of 100% and therefore, there is total loss of income. The Tribunal has made departure from the multiplier method without assigning any reason and awarded meager amount of compensation. Further, the Tribunal has awarded very meager amount for pains and sufferings, loss of amenities of future life etc.

4. Learned counsel for the respondent-insurer submits that the appellant-claimant has produced on record the certificate in Form COMP 'B' issued by the Medical Superintendent, Rural Hospital, Hingoli. However, the appellant-claimant has not examined the concerned Medical Officer to prove the contents of the said certificate. Even though said certificate is admitted by respondent No.2 and marked at Exh.32, it is not clear that by sustaining

permanent disablement to the extent of 50%, the earning capacity of claimant is affected thereby and to what extent. Even the Tribunal, in paragraph No. 13 of the judgment, has observed that the appellant-claimant can still earn money by doing light work like watchmanship, and the said observations have been made considering the appearance of appellant-claimant before the Tribunal. There is no total loss of income as such. The Tribunal, after considering the case from every angle, awarded just and reasonable compensation. There is no substance in the appeal and the appeal is, thus, liable to be dismissed.

5. The appellant-claimant has deposed in his examination-in-chief before the Tribunal that he was in employment of M.S.R.T.C. as a Security Guard since 17 years prior to the accident, and has resigned from the said service as he is unable to work as night watchman after the accident. He has further explained that he is unable to sit and stand up due to the injuries sustained by him. He cannot lift up his right hand as he had sustained injuries to his back. According to him, he can do no work. However, in paragraph No. 13 of the judgment, the Tribunal has observed that considering the appearance of the appellant-claimant before the Tribunal, it appears that the appellant-claimant can still earn money by doing light work like watchmanship. Respecting the said observations, in my opinion,

the Tribunal should have applied the multiplier method by considering the loss of income to some extent. However, without assigning any reason, the Tribunal has made departure from the said method and awarded very meager lump-sum amount by way of compensation.

6. The appellant-claimant was earning Rs.3980/- p.m. as salaried income. Considering the medical certificate in Form Comp.'B' at Exh.32 and the observations made by learned Member of the M.A.C.T., Hingoli, it would be appropriate if the loss of income of the appellant-claimant is considered at Rs.1500/- per month, which would be just and appropriate, corresponding to Rs.18000/- per year. Considering the age of appellant-claimant, the multiplier 14 would be appropriate in this case. By applying the same, the appellant-claimant is entitled for compensation of Rs.2,52,000/-. It appears that even in absence of documents, considering the injuries sustained by the appellant-claimant, which resulted into permanent disablement, the Tribunal has awarded Rs.15000/- for medical expenses. Apart from this, the Tribunal has also awarded Rs.10,000/- towards pains and sufferings, loss of amenities and due to disablement sustained by him. It would be just and proper if Rs.10,000/- more is added under the said head of pains and sufferings etc.

7. In view of the above discussion, the break up of compensation, which can be broadly categorized under various heads as follows:-

I) Loss of future income	Rs.2,52,000.00
II) Medical expenses	Rs. 15,000.00
III) Pains and sufferings	Rs. 20,000.00

	Rs.2,87,000.00
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Thus the appellant-claimant is entitled for compensation of Rs.2,87,000.00 (Rupees Two lacs eighty seven thousand only)

8. In view of the above, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 19.12.2002 passed by the Member, M.A.C.T., Hingoli, in M.A.C.P. 263 of 2000 is hereby modified in the following manner:-

“The respondent Nos. 1 and 2 shall jointly and severally pay to the appellant-claimant an amount of Rs.2,87,000/- (Rupees Two lacs eighty seven thousand only) including the compensation towards no fault liability, with interest as worked out by the Tribunal.

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up in tune with the modification, as aforesaid.
- V. Appeal is accordingly disposed of.

9. At this stage, learned counsel for the respondent-insurer submits that though the appeal was filed in the year 2003, it was dismissed for want of prosecution on 22.7.2003 and the same was restored in the year 2010 by order dated 9.6.2010. Learned counsel submits that the appellant claimant is therefore, not entitled to claim interest for the said period.

10. In view of this, the appellant-claimant would not be entitled for interest as worked out by the Tribunal, for the period from 22.07.2003 to 09.06.2010.

(V. K. JADHAV, J.)

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