

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1077 OF 2016

Yuvraj Abhimanyu Yadav,
Age – 21 years, Occu. Education & part-time job,
R/o Vil. - Siroli,
Tq. Sonpeth, Dist. Parbhani

.. Appellant
(Original Claimant)

Vs.

1] Kondiba Ganpatrao Bansode,
Age – Major, Occu. Business,
R/o. Village – Kanhegaon,
Taluka – Gangakhed,
District – Parbhani

2] Kundlik Shivaji Yadav,
Age : Major, Occu. Business,
R/o Village – Bhavthana,
Taluka – Ambejogai,
District : Parbhani

3] Datta Narayan Kachave,
Age : Major, Occu. Business,
R/o. Village – Daithana,
Taluka & District – Parbhani

4] United India Insurance Co. Ltd.,
Through its Branch Manager,
Dayawan Complex, 2nd Floor,
Station Road, Parbhani,
District – Parbhani.

.. Respondents

Mr. Ashutosh S. Kulkarni, Advocate for the appellant
Mr. G.N. Kulkarni, Advocate for respondent nos.1 and 2
None present for respondent no.3 though served
Mr. S.R. Bodade, Advocate for the respondent no.4

CORAM : P.R. BORA, J.
DATE : 01/09/2016

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. With consent of learned counsel for the parties, the appeal is heard finally.

4. The appellant has filed the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal at Gangakhed, District - Parbhani in M.A.C.P. No. 24 of 2012 decided on 13/11/2014.

5. The aforesaid petition was filed by the appellant seeking compensation from the owners and insurers of two auto-rickshaws involved in the alleged accident. The appellant was travelling from one of such auto-rickshaw and met with the accident. It was the case of the appellant that in the accident so happened, he suffered severe injuries to his hand and the leg and has also incurred 18% permanent disability because of such injuries. The appellant/claimant had therefore claimed the compensation to the tune of Rs.2 Lakhs. As submitted by learned counsel for the appellant, the claim was restricted to the amount of Rs.2,00,000/- for want of the resources with the appellant for payment of court fees, though in fact the appellant was entitled to more compensation than claimed. The claim petition was resisted by the respondents and more particularly, the insurance company. In order to substantiate the contentions raised in the petition, the appellant himself deposed before the Tribunal and placed on record the

disability certificate issued by the Civil Surgeon of General Hospital, Parbhani. The appellant had also placed on record the medical bills worth Rs.10,000/-. The learned Tribunal after having assessed the oral and documentary evidence on record, however, granted the compensation of Rs.25,000/- inclusive of N.F.L. compensation. Aggrieved by, the appellant has filed the present appeal.

6. Shri Ashutosh Kulkarni, learned counsel for the appellant submitted that the Tribunal has not properly appreciated the evidence placed on record as about the permanent disablement caused to the appellant/claimant and has awarded inadequate compensation. Learned counsel submitted that considering the young age of the appellant, the Tribunal must have assessed the future loss of income in proportion to the disablement incurred by the appellant and accordingly ought to have determined the amount of compensation. Learned counsel submitted that evidence as about the medical bills placed on record has also been not considered by the Tribunal and nothing has been awarded under the head of medical expenses. Learned counsel further submitted that the Tribunal has also not taken into account that the appellant/claimant may not be able to enjoy his future life as a normal person because of the disablement caused to him out of the injuries sustained to him in the alleged accident. Learned counsel therefore prayed for enhancement in the amount of compensation to the tune of Rs.2 Lakhs, as has been claimed by the appellant in the petition before the Tribunal.

7. Shri Bodade, learned counsel for respondent no.4 – insurance company supported the impugned judgment. Learned counsel submitted that in-

fact there was no sufficient evidence even for granting compensation of Rs.25,000/-. Learned counsel, therefore, prayed for dismissal of the appeal.

8. I have perused the impugned judgment as well as the oral and documentary evidence on record of the Tribunal. The appellant/claimant himself has deposed before the Court and has also filed on record the disability certificate issued by the Civil Surgeon, General Hospital, Parbhani and the medicine bills. It is true that the appellant/claimant did not examine the Medical Officer, who has issued the disability certificate and has also not examined any witness to prove the medicine bills. The question is, whether merely for this reason, the aforesaid evidence can be outrightly rejected by the Tribunal. It was not the case of the respondents that the appellant/claimant had procured a bogus disability certificate. In his testimony before the Court, the appellant/claimant had specifically deposed that he took treatment at Civil Hospital, Parbhani. He has further deposed that after examining him, the concerned Medical Officer issued the disability certificate in form No. 'B'. The appellant/claimant had further deposed that the concerned Medical Officer has signed the said certificate in his presence and his signature was also obtained on the said certificate. In the cross-examination, all these facts have not been denied or disputed by the respondents.

. In the circumstances, in-fact, there was no reason for the Tribunal to keep the said disability certificate out of consideration. It is further not understood, as to on what basis, the Tribunal has recorded the finding that the fracture sustained by the appellant is reunited and that it may not result in causing any loss

of income to the appellant. The Tribunal has also not considered the medicine bills filed on record for the reason that they were not proved by the appellant. The approach so adopted by the Tribunal also cannot be subscribed. In catena of judgments, the Courts have observed that unless any serious doubt is raised, the victims of the accidents shall not be required to prove the medicine bills by examining the shop owner, from whom the medicines were purchased. The medical bills placed on record demonstrate that they are of the same period in which the appellant/claimant was undergoing the treatment at Civil Hospital, Parbhani. In the circumstances, merely because the said bills are not proved, could not have been the reason for not granting the expenses incurred by the appellant towards the same.

. It further appears to me that the Tribunal has not considered the aspect that the appellant/claimant will not be able to lead a normal future life and may not be able to enjoy the amenities in life as a normal person.

9. After having considered the entire material on record, it appears to me that the compensation awarded by the Tribunal is unjust and inadequate. Having regard to the fact that the appellant/claimant had suffered 18% permanent disablement and having regard to the period of treatment undergone by him and the expenses incurred by him, it appears to me that compensation of Rs.75,000/- will be just and fair compensation payable to the appellant/claimant. The impugned award needs to be modified to the aforesaid extent. Hence, the following order :-

ORDER

- I) The Appeal is partly allowed.
- II) The appellant is entitled to total compensation of Rs.75,000/- inclusive of N.F.L. compensation. Respondent nos.1 to 3 shall jointly and severally pay the enhanced amount of compensation to the appellant alongwith interest at the rate of 9% per annum from the date of petition till its realization with the proportionate costs of the appeal.
- III) The appeal stands allowed in the aforesaid terms.

[P.R. BORA]
JUDGE

arp/