

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

FIRST APPEAL NO. 1012 OF 2002

Rafique ali Jafar Ali

Age : 23 Yrs., Occ.

R/o : Kasoda, Tq. Erandol,
Dist. Jalgaon.

**.... APPELLANT/
[ORI. CLAIMANT]**

V E R S U S

1. Divisional Manager
Maharashtra State Road Transport
Corporation, Jalgaon.
2. Deelip Lokuram Wadhva
New Hindusthan Road Lines,
206, Transport Nagar,
Indore (M.P.)
[Appeal dismissed against
R.No. 2 vide Court's Order
dated 16/12/2003].
3. Oriental Insurance Co.Ltd.
Through its Branch Manager,
Jalgaon.
4. Baburao Dhanji Mawale
(Marathe), S.T.Driver,

raver [since deleted vide
order on Exh. 23].

.... **RESPONDENTS/**
[ORI. RESPONDENT]

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Mr. U.S.Malte, Advocate for Appellant.

Mr. M.K.Goyanka, Advocate for R.No. 1.

Mr. A.S.Deshpande, Advocate for R.No. 3.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 12th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed by the original claimant against the Judgment and Award of M.A.C.P. No. 330/1994, which was pending before Motor Accident Claims Tribunal, Jalgaon. The Tribunal has dismissed the claim filed in respect of the injuries sustained by the claimant in motor vehicular accident. Learned counsels for both sides are heard.

2. The Tribunal has dismissed the claim mainly by holding that simple injuries were sustained by the claimant as per the record created by the first hospital viz. Cottage

hospital. In view of this circumstance, this Court has carefully gone through the substantive evidence given by the claimant and the record which is exhibited and proved before the Tribunal.

3. The claimant has given evidence that in the accident, he sustained injuries mainly to his face and the injuries included fracture to jaw bone and loss of 5 teeth. Injuries to other portions like legs were also sustained. He has given evidence that he received treatment in civil hospital at Jalgaon and then received treatment of private Dentist. He has given evidence that he was required to spend ₹ 15,000/- on treatment and medicines. During his evidence, the record like police papers showing that the claimant had sustained injuries in the accident, the record showing that he received treatment in cottage hospital and civil hospital, was exhibited.

4. At Exh. 45, there is M.L.C. prepared by the cottage hospital, Parola and it shows that there were 3 injuries. One was C.L.W. on chin of size 3"x1/2"x1/2" deep and with clotted blood with swelling. Other injury was on

right knee joint of size 2"x1" and the third injury was abrasion with clotted blood on left knee joint of size 2"x2". He was taken to the Cottage hospital on 10/07/1994 and discharged on the same day. Though the injuries are described as simple in nature, the injury certificate prepared by General Hospital, Jalgaon shows that on 10/07/1994 itself claimant was admitted in the said hospital at 7.00 p.m. He was discharged from Cottage hospital at 3.00 p.m. The certificate prepared by the civil hospital shows that x-ray was taken and there was fracture of mandible. It also shows that 5 teeth which were injured were removed and the injury was grievous in nature. Wiring was done as there was fracture to mandible. Another certificate issued by Saraswati hospital at Jalgaon is at Exh. 47, which shows that 6 teeth were extracted and wiring was done for fracture of mandible. Due to these injuries, there is permanent disability and difficulty in chewing and there is also speech problem.

5. When the aforesaid record was given exhibit, there was no need to the claimant to call doctors as witnesses for proving the record. This record ought to have been believed and used for considering the claim of the claimant.

It can not be said that these injuries were simple in nature. Some other record was produced showing that in future it was necessary for the claimant to receive treatment and certificates were given in respect of probable expenditure. This record was not proved by examining the Doctor, it was not exhibited.

6. This Court has no hesitation to hold that aforesaid record is sufficient to prove that there was fracture to mandible and the claimant lost at least 5 teeth in the accident. These injuries have certainly caused permanent disability though extent is not given in aforesaid certificate. By the amendment made to the Motor Vehicles Act in November, 1994, such claimant was made entitled to get at least ₹ 25,000/- as compensation under the principle of 'no fault'. In the present matter, the claimant received treatment at 3 places including the place of private doctor, the Dentist. The claimant must have spent some amount on treatment, conveyance, medicines, etc. This Court holds that the amount of ₹ 25,000/- needs to be given under the head of permanent disability and pain and sufferings. The amount of ₹ 15,000/- can be given under the head of amount actually

spent on treatment, conveyance, food, etc. Thus, the claimant is entitled to get amount of ₹ 40,000/- as compensation under the principle of 'no fault'.

7. In the result, following order is made.

- [i] First Appeal No. 1012 of 2002 is allowed only against respondent No. 1 – M.S.R.T.C. The claim petition is partly allowed.
- [ii] The Judgment and Award of the Motor Accident Claims Tribunal, Jalgaon is set aside to give the total compensation of ₹ 40,000/- [Rupees Forty Thousand] which is inclusive of the amount which could have been paid under the principle of 'no fault'.
- [iii] The interest @ 9% per annum is payable on the entire compensation amount from the date of petition till the date of realization of the amount.
- [iv] After depositing the amount in Tribunal, the appellant be permitted to withdraw the same.
- [v] Claim petition as against the other respondents is dismissed and that decision of the Tribunal is not set aside.

[vi] Award be prepared accordingly.

[T.V.NALAWADE, J.]

KNP/F.A. 1012.2002 - [J]