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

FIRST APPEAL NO. 2259 OF 2010

Subhash s/o. Ramu Rajput,
Age 41 years, Occu. Nil.,
R/o. Kelwad, Tq. Rahata,
Dist. Ahmednagar.
At present R/o. Ghogargaon,
Tq. Newasa, Dist. Ahmednagar. **....Appellant.**
(Ori. Claimant)

Versus

1. Dadasaheb Gangadhar Taskar,
Age Major, Occu. Agril & Business,
R/o. Kelwad, Tq. Rahata,
Dist. Ahmednagar.

2. Haribhau s/o. Sopan Rajput,
Age Major, Occu. Business,
R/o. kelwad, Tq. Rahata,
Dist. Ahmednagar.

3. Branch Manager,
The Oriental Insurance Co. Ltd.,
Branch Shrirampur,
Shivaji Cross Road, Tq. Shrirampur,
Dist. Ahmednagar. **....Respondents.**
(Ori. Respondents)

Mr. R.A. Tambe, Advocate for appellant.

Mr. M.A. Jahagirdar, Advocate for respondent Nos. 1 and 2.

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

CORAM : T.V. NALAWADE, J.
DATED : 3rd March, 2016.

JUDGMENT :

1) The appeal is filed by original claimant of Claim

Petition No. 263/2005, which was pending before the Claims Tribunal, Shrirampur, District Ahmednagar. The proceeding was filed under section 163-A of the Motor Vehicle Act and the decision is challenged on the point of quantum of compensation and also due to the fact that Insurance Company is not made liable to pay compensation.

2) The accident took place on 30.4.2004 at about 8.00 p.m. within local jurisdiction of Manmad City Police Station. Claimant - Subash Rajput has contended that he was working as a driver with respondent No. 1 - Dadasaheb Taskar and on that day, at the relevant time, when one dog ran across the road, he applied break, but the auto-rickshaw did not stop, it turned turtled. It is contended that he sustained fracture injuries to his right hand and even after the treatment, he is not fully recovered. Under various heads, he had claimed compensation of Rs. four lakh.

3) It is the case of claimant that though the vehicle was standing in the name of respondent No. 1, respondent No. 2 was doing partnership business with respondent No. 1 and due to that, the claimant is entitled to get compensation from respondent No. 2 also. The vehicle was insured with respondent

No. 3, at the relevant time.

4) Respondent No. 1 did not file written statement and exparte order was made against respondent No. 2. Insurance Company filed written statement and contested the matter by contending that in the past, proceeding was filed before Commissioner of Workmen's Compensation bearing W.C. Application No. 62/2004 at Ahmednagar and this fact is concealed by the claimant. Insurance Company contended that there has been breach of conditions of policy and due to that, it cannot be made liable to pay the compensation. It is contended that at the relevant time, 3 to 4 passengers were being carried in auto-rickshaw when there was no permission for carrying passengers. Insurance Company contended that the amount of only Rs. 15,000/- can be awarded in favour of plaintiff, that too for the medical expenses u/s. 163-A of M.V. Act.

5) To substantiate the claim, the claimant examined himself and gave evidence which is as per aforesaid contentions. Only the learned counsel for Insurance Company cross examined the claimants. It is not disputed that it was a goods carrier. In the cross examination, he has admitted that persons like Babu Aher, Santoshi Mali and Bajirao Pawar were in the auto, but he has

given evidence that they were labours, they were expected to load tiles in the auto-rickshaw. He has denied that they were travelling as fair paying passengers.

6) The claimant has placed reliance on the copies of police papers which are at Exhs. 27 to 28. The police papers show that the vehicle was proceeding for loading tiles in the vehicle and at that time, the accident took place. The crime was registered on 9.6.2004 when the accident had taken place on 3.6.2004, but the fact of the accident is not disputed. Police prepared the panchanama of the auto-rickshaw also and found that damage was caused to the auto-rickshaw as it had turned turtled. The police papers are as per the aforesaid contentions made in the petition and evidence given by the claimant. This evidence is sufficient to prove that the aforesaid vehicle was involved in the accident and the claimant was on driver's seat at the relevant time.

7) The claimant has examined Dr. Bapusaheb Gade to prove that he had sustained injuries in the accident and he is suffering from permanent disability. The evidence of the doctor shows that the right hand of the claimant below elbow was required to be amputated. According to the doctor, due to this

injury, there is permanent disability to the extent of 69%. The certificate is duly proved as Exh. 41.

8) Copy of insurance policy is produced at Exh. 46 and it shows that it was insured as goods carrier. U/s. 147 of the M.V. Act, statutory liability in respect of driver needs to be covered. Two persons could have been carried in the vehicle. In view of the nature of evidence given by the claimant, this Court holds that no fundamental breach of conditions of policy was there and so, the Insurance Company cannot be absolved from the liability to pay the compensation. It appears that the Insurance Company was exonerated by holding that vehicle was not insured with respondent No. 3. The other reason is given that there has been breach of conditions of policy. No nexus was established between the respondent No. 2 and registered owner and for that reason, matter was dismissed as against respondent No. 2.

9) Exh. 47 shows that the vehicle was insured by Dadasaheb Taskar, respondent No. 1 with respondent No. 3 for the period from 12.6.2003 to 11.6.2004. Copy of R.C. book is also produced to show that respondent No. 1 was registered owner of the vehicle. In view of these circumstances, the Tribunal ought to have fasten liability on Insurance Company.

10) The Tribunal has awarded compensation of Rs. 1,00,755/-. Amount of Rs. 69,000/- is awarded under the head of permanent disability, amount of Rs. 6,755/- is awarded under the head of amount spent on treatment and medicine, amount of Rs. 10,000/- is awarded under the head of pain and suffering, amount of Rs. 5,000/- is awarded under the head of special diet and amount of Rs. 10,000/- is awarded under the head of loss of amenities of life. The Tribunal has not calculated the compensation amount to ascertain the loss of future income. Even if it is presumed that by working as a driver in the year 2005, the claimant was earning Rs. 3,000/- p.m. it could have been presumed that due to loss of right hand, earning capacity is reduced to the extent of 50%. In such a case, it could have been easily presumed that there is permanent total disablement, he can no more work as a driver. As per the schedule the amount of Rs. 2,70,000/- could have been given as compensation under the head of loss of future earning. This Court holds that amount of Rs. 2,70,000/- can be given under this head. There are bills of medicines produced and in view of the nature of injury, amount of Rs. 15,000/- could have been given under the head of amount spent on treatment and medicines. Under the head of pain and suffering amount of Rs.

5,000/- could have been given. In view of the bills actually produced and facts and circumstances of the present case, this Court holds that total amount of Rs. 3,06,755/- needs to be given as the compensation. Considering the nature of injury and occupation of claimant, the Tribunal could have even presumed that there is permanent total disablement. In the result, following order is made.

O R D E R

The appeal is allowed. The judgment and award of the Tribunal is modified to make the total compensation as RS. 3,06,755/- (Rupees three lakh six thousand seven hundred fifty five). Interest at the rate of 9% p.a. will be payable on the entire amount. Respondent Nos. 1 and 3, owner and Insurance Company are jointly and severally liable to pay the compensation. If Insurance Company has already paid compensation amount under the principle of no fault, that amount needs to be deducted.

[T.V. NALAWADE, J.]

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