

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

First Appeal No. 985 of 2006

* Sopan s/o Chhagan Chauhan
Since deceased through his
legal representatives:

- 1) Gayabai w/o Sopan Chauhan,
Age 50 years,
Occupation : Household,
- 2) Ambadas s/o Sopan Chauhan,
Age 30 years,
Occupation: Agriculture.
- 3) Bhanudas s/o Sopan Chauhan,
Age 25 years,
Occupation: Agriculture.
- 4) Nilabai w/o Namdeo Rathod,
Age 28 years,
Occupation : Household.
- 5) Silabai w/o Sanjay Rathod,
Age 23 years,
Occupation: Household.
All R/o Math Tanda, Dadegaon,
Taluka Ambad, Dist. Jalna.

... Appellants.

Versus

- 1) Shaikh Zainuddin s/o Shaikh
Jamaluddin,
Age 55 years,
R/o Pension Pura, Mothikhana,
College Road, Jalna.
- 2) The Branch Manager,
Oriental Insurance Company Ltd.
Through its Branch Office,
Jalna, District Jalna.

.. Respondents.

Shri. A.S. Usmanpurkar, Advocate, for appellant.

Shri. A.G. Kanade, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 22nd JANUARY 2016

JUDGMENT:

1) The appeal is filed by original claimant to challenge the judgment and award of Claim Petition No.151 of 2004 which was pending before the Claims Tribunal Jalna. The appeal is filed for enhancement of compensation and also to challenge the finding that the claimant contributed in the accident due to his negligence. Both the sides are heard.

2) The accident took place on 6-3-2004 at 3.00 p.m. on Jalna - Beed Road at village Math Tanda. It is the case of the claimant that when he was walking by the side of the road, the truck bearing No. MWD-1663 which was driven by respondent No.1 gave dash to him and the accident took place. It is his case that the truck virtually run over his two legs and he was dragged up to distance of 20 feet. It is his case that he sustained injuries on other

parts of the body also including to his head. It is his case that his right leg was required to be amputated above the knee portion and his shoulder also sustained grievous injuries and so he cannot do any work. It is his case that he was required to spend huge amount on treatment, medicine, and also on conveyance and attendant. He has contended that the extent of permanent disability is 57% and he is entitled to get compensation of Rs. Three lakh.

3) The owner and the insurance company contested the matter by denying the aforesaid contentions.

4) The claimant examined himself to prove the negligence of the truck driver. He has deposed that he was on foot and he was on left hand side of the road. He has given evidence that the truck gave dash to him as it was in high speed and it had come to the wrong side of the road. He has given evidence that he sustained injuries to both legs and to other parts of the body and his right leg was required to be amputated. He has given description of the hospitals where he was taken and he has given particulars of the amounts spent by him.

5) The claimant has given evidence that in the past he was running grocery shop and flour mill and his monthly income was Rs.5000/-. He has given evidence that he cannot do any work due to injuries.

6) The claimant has placed reliance on police papers to prove the negligence of the truck driver in addition to the substantive evidence given by him. It is not disputed that police registered crime against the driver of the truck and the case was also filed against him. This Court has carefully gone through the spot panchanama which contains the hand sketch map of the spot of accident. This document shows that the blood was found on the eastern side of tar road and it was not on tar portion of the road. The spot panchanama shows the tar road had width of 18 feet and on both sides of the tar portion there were kachha portions, wings.

7) The claimant examined one witness Bhavarsing Rathod also to prove that the accident had taken place due to fault of the truck driver. The evidence of the claimant is consistent with the police papers. It appears

that the Tribunal has considered one so called admission given in the cross examination by the claimant that he is required to cross the road from the place where he was returning. This admission does not show that at the relevant time, at the time of impact, he was crossing the road. He had gone to other side of the road from his place and he was returning to his place. But that does not mean that at the relevant time he was crossing the road. The accident took place in broad day light in the village itself. The truck had given dash from back side as per the version given by the claimant. In view of the direct evidence and the position mentioned in the spot panchanama, it was necessary for other side to give evidence in rebuttal. There is nothing in rebuttal and so it is not possible to infer that there was some contributory negligence on the part of the claimant. This Court has no hesitation to hold that the Tribunal has committed error in holding that there was 30% negligence on the part of the claimant in the accident.

8) The claimant has examined Dr. Kulkarni to prove the disability certificate. The record of medical

examination, MLC, is not seriously disputed. In police papers also there is mention about injuries sustained by the claimant. MLC shows that there was crush injury to the right leg and injuries to tibia, fibula etc. and there were injuries on the left leg and also to the head. The discharge card of Government hospital shows that due to the aforesaid injuries right leg was required to be amputated above the knee and treatment was given in respect of injuries sustained to other parts of the body. He was indoor patient for more than 3 months in one hospital and admittedly he was shifted to at least three hospitals, at three places.

9) Evidence of Dr. Kulkarni and the disability certificate show that due to aforesaid injuries there is permanent disability to the extent of 57%. Photograph of the claimant is there on the handicap certificate. Though certificate is not in the form prescribed in the Motor Vehicles Act, the fact that the claimant lost right leg above the knee and there is injury to left leg of aforesaid nature cannot be ignored. This Court has no hesitation to hold that due to injury to left leg there is permanent disability

in respect of left leg also as mentioned in the handicap certificate.

10) The main grievance of the claimant is in respect of quantum of compensation given under the head of loss of future income. Due to reducing the amount by 30% for aforesaid reasons the amount was reduced. Further the judgment and award of the Tribunal shows that one-third amount of income was deducted for personal expenses when it is injury case and not death case. The Tribunal, however, adopted 11 as multiplier for calculation of the loss of future income. The Tribunal has presumed that the monthly income was Rs.3000/-. The local body has not issued any permit or licence for running the flour mill. Due to absence of record of authority in respect of flour mill the Tribunal has rightly refused to believe that the claimant was running flour mill. In any case, in the year 2004 even labour was earning Rs.3000/- per month. This Court holds that the earning capacity has come down by 57% and so there is monthly loss of at least Rs.1710/-. 11 can be adopted as multiplier as the claimant had crossed age of 50 years at

the relevant time. Thus, the total loss of future income comes to Rs.2,25,720 (1710 x 12 x 11). the Tribunal has awarded Rs.35,000/- as compensation under various heads. This amount needs to be added to the compensation which can be awarded under the head of loss of future income. Thus, the total amount of compensation comes to Rs,2,60,720/-.

11) One more point was argued by the learned counsel for the claimant. He submitted that for no reason the Tribunal has directed to pay interest from the date of award till date of realization. This Court has no hesitation to observe that the Tribunal has committed error in making such order. The interest needs to be paid from the date of petition till realization. Similarly the interest at the rate of 6% per annum given by the Tribunal is on lower side. In the year 2006 rate of interest of any nationalized bank was between 8 and 9 per cent per annum. This Court holds that the claimant is entitled to interest at the rate of 9% per annum and the interest needs to be given from the date of the petition. In the result, following order :--

12) The appeal is allowed. The judgment and award of the Claims Tribunal is modified to make the compensation as Rs.2,60,720/- (Rupees Two Lakh Sixty Thousand Seven Hundred & Twenty only). Interest at the rate of 9% per annum on this amount will be payable from the date of petition till the date of realization of the amount. Amount if any already paid by the Insurance Company needs to be deducted from this Court. Award be prepared accordingly.

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

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