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

**FIRST APPEAL NO. 876 OF 2015**.

Komal d/o. Ramprasad Varma,
Age 20 years,
Occupation : Household,
R/o. Nandanvan Colony,
Latur, District Latur. **....Appellant.**
**(Ori. Claimant)**

**Versus**

1] Ramdas s/o. Shivajirao Jagdade
Age: 32 Years,
Occupation: Driver
R/o. Selu- Javalga
Taluka Renapur,Dist Latur.

2] Laxmikant s/o. Chanappa Manthale,
Age: Major,
Occupation: Business,
R/o. Manthale Nagar, Latur.
Taluka and District Latur.

3] Oriental Insurance Co.Ltd.
Through its Branch Manager,
Opposite Sindh Theater, Latur,
Taluka and District Latur.. **...Respondents.**
**(Ori. Respondents)**

Ms. V.G.Sakolkar, advocate for appellant.

Mr. G.L.Awale, for respondents Nos. 1 & 2.

Mr. M.K.Goyanka, advocate for Respondent No. 3.

**CORAM : T.V. NALAWADE, J.**
DATED : 18th January, 2016.

**JUDGMENT :**

1) Appeal is **admitted.** Notice after admission. It is

waived by the learned counsels appearing for respondents. By consent heard both the sides for final disposal.

2) The appeal is filed by original claimant of Claim Petition No. 378/2010, which was pending before the Claims Tribunal, Latur. Quantum of compensation is challenged by the original claimant.

3) At the relevant time, the claimant was a girl aged about 20 years and she was unmarried. She sustained injuries like fracture injury to pelvic bone, injury to liver, injury to abdominal region and injuries to ribs of left side. It is her case that she received treatment in Apex Hospital of Latur and then in other hospitals, but she is not fully recovered. It is her case that she was required to spend more than Rs. two lakh on treatment and medicines and she was required to spend on other heads like attendance etc. Under various heads like loss of future income, loss of marriage prospects, permanent disability, she had claimed that she is entitled to Rs. 14.45 lakh, but she had restricted her claim to Rs. 3.5 lakh.

4) To substantiate the claim, the claimant examined herself and her evidence is as per the aforesaid contentions. She

has given evidence that she was student of science faculty at the relevant time. She has given evidence that due to injuries, she cannot walk without support and the movements of her body are restricted. It is her case that she wanted to seek employment and in that case, she could have easily earned Rs. 5,000/- per month. She has given evidence that she is suffering from permanent disability and she has lost prospects of making carrier and also of marriage.

5) The claimant produced voluminous record like bills of treatment and medicines and this record is exhibited. This record is not seriously disputed. This record includes M.L.C. and discharge card. They show that there were injuries like fracture of pelvic bone, injury to liver, injury to chest and abdomen etc. The disability certificate is duly proved as Exh. 50 and it shows that due to aforesaid injuries there is permanent disability and it's extent is 50%. Dr. Gulve is examined to prove the disability and he has given evidence that he ascertained the disability after examination and it was both clinical and radiological examination. The description of the permanent disability is given by him. He has given evidence that due to injuries, there will be restrictions in the movement of heap joint, there is loss of strength of heap, thigh and leg of left side. He has given

evidence that due to other injuries, there is disfiguration also. Some record is produced to show that the claimant had filled the form for 12th standard examination, but she did not appear for examination which was held in October 2008. The accident took place on 11.8.2008.

6) The Tribunal has held that the yearly income of the claimant needs to be presumed as Rs. 15,000/- and as the permanent disability is to the extent of 50%, there is loss of Rs. 7,500/- per annum. Sixteen is adopted as multiplier for calculation of future loss of income and the amount of Rs. 1.2 lakh is only given under the head of loss of earning.

7) The learned counsel for claimant, appellant placed reliance on two reported cases like **AIR 2009 SUPREME COURT 3104 (1) [Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation]** and **2012 AIR (SC) 2185 [Santosh Devi Vs. National Insurance Company Ltd. and ors.].** The learned counsel submitted that the Tribunal ought to have presumed that monthly income was atleast Rs. 3,000/- and the Tribunal ought to have given 50% increase in the monthly income for the calculation of loss of future income. In view of the ratios of aforesaid two cases, this Court holds that the Tribunal ought to

have adopted such method. It can be presumed that monthly income of the claimant is Rs. 3,000/- and by increasing 50%, monthly income could have been Rs. 4,500/-. As the earning capacity has come down by 50%, there is monthly loss of Rs. 2,250/- to the claimant. Thus, yearly loss comes to Rs. 27,000/-. Eighteen can be adopted as multiplier for calculation of loss of future income in view of the ratio laid down in aforesaid cases and so, under the head of loss of future income, amount of Rs. 4,86,000/- needs to be given to the claimant. Considering the circumstance that her marriage prospectus are affected, this Court holds that atleast amount of Rs. 50,000/- under the head of loss of marriage prospectus needs to be given. The Tribunal has given amount of Rs. 1,90,000/- under the head of medicines and treatment and such amount needs to be given. The amount of Rs.2,00,000/- is given under the head of permanent disability and so, such amount also needs to be given. Similarly, the Tribunal has given amount of Rs. 15,000/- under the head of amount spent on diet etc. Such amount needs to be given. Thus, the total amount comes to Rs 9,49,000/-.

8) The Tribunal has given interest at the rate of 7.5% p.a. when the matter was decided in the year 2012. The rate of interest of nationalised banks is between 8% and 9%. This Court

holds that interest at the rate of 9% p.a. ought to have been given. On that point also, the decision needs to be corrected. In the result, following order is made.

**<u>O R D E R</u>**

(i) Appeal is allowed. Judgment and award of Tribunal is modified to make the compensation as Rs. 9,49,000/- as the compensation on the principal of fault. This amount is inclusive of the amount which must have been given on the principle of no fault. The interest at the rate of 9% p.a. will be payable on the entire amount. The amount already deposited by the respondent, owner is to be deducted from that amount. Award is to be prepared accordingly.

**[ T.V. NALAWADE, J. ]**

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