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

FIRST APPEAL NO.: 337 OF 2008

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Balasaheb S/o Dhondiram Mali,
Age: 36 yrs., Occ. Goldsmith,
R/o. Nilanga, Dist. Latur. ... **APPELLANT**
(ORIG. CLAIMANT)

VERSUS

1. Balajai S/o Laxman Dhorsangve,
Age: 30 years, Occu. Service,
R/o. Jalkot, Taluka Jalkot,
Dist. Latur.

2. Dilip S/o Shriram Aradwad,
Age: 36 years, Occu: Service,
R/o. Kajal Hipparga, Tq. Ahmadpur,
Dist. Latur.

3. The New India Assurance Company Ltd.,
Through its Manager, Chandranagar,
Latur Dist. Latur. ... **RESPONDENTS**
(ORIG.RESPONDENTS)

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Advocate for the Appellant: Mr. Girish Rane.
Advocate for the Respondent Nos.1 and 2: Mr. S. S. Manale.
Advocate for Respondent No.3: Mr. A. B. Kadethankar.

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CORAM:- T. V. NALAWADE, J.
DATED:- 18th JANUARY, 2016.

JUDGMENT:

1. Appeal is admitted. Notice after admission, waived by the other side. Heard learned counsels for both sides by consent for final disposal.

2. The appeal is filed by original claimant to challenge the quantum of compensation awarded to him in Claim Petition No.17 of 2006 by Claims Tribunal, Nilanga, District Latur. The total compensation of Rs.40,000/- and interest at the rate of 6% p.a. Is awarded. Compensation of Rs.2 Lakh was claimed.

3. As the Appeal is filed only to challenge the quantum of compensation, this Court is discussing the relevant material. In M.L.C. prepared by Government Hospital, initially injuries were shown to left ankle and left forearm and suspicion was expressed that there was a fracture ulna left but the opinion was reserved. It is the case of claimant that he then received treatment at other place like Nizamabad. The X-ray and other record of Nizabad were produced but no doctor from that place is examined. The claimant has examined one Dr. Anand Ashture who is M.B.B.S. and who is also practicing in orthopedics. He has issued disability certificate. He has given evidence that he had taken X-rays and on the basis of clinical and radiological examination he has given the opinion. As per his opinion due to the fractures of left radius ulna and right radius the disability is there which is to the extent of 26% and which is permanent.

4. The claimant has given evidence that in the past he was working as an Artisan, he was preparing gold ornaments and so his earning capacity is affected. He has examined some witnesses to prove this contention. However, no record as such was produced to show that any goldsmith had given gold to him for preparation of ornaments. In absence of such account, record, it is not possible to believe that he was working as Artisan when his occupation is given as goldsmith. Further, the doctor, who gave treatment at Nizamabad, is not examined and M.L.C. prepared by Government Hospital does not mention that there were fracture injuries to both the hands. The Tribunal has held that the extent of permanent disability is proved but the Tribunal presumed that the earning capacity has come down by 10% only. After coming to this conclusion, the Tribunal has not done the exercise for giving the compensation under the head of loss of future income and the amount of Rs.10,000/- only under this head is given.

5. The accident took place in the year 2005. It can be presumed that the monthly income of the claimant was Rs.3,000/-. If the earning capacity has come down by 10% it can be said that there is monthly loss of Rs.300/-. He has

given his age as 35 years and so 16 can be adopted as multiplier for calculation of future loss of income. The future loss of income comes to Rs.57,600/- (300x12x16). The Tribunal has given the amount of Rs.10,000/- only under this head and so this Court holds that the compensation needs to be enhanced by Rs.47,600/-. Similarly, the rate of interest at the rate of 9% p.a. needs to be given.

6. In the result, following order is made:

Appeal is allowed and Award of Tribunal is modified to enhance the compensation by Rs.47,600/-. The interest rate is corrected to make it 9% p.a. The interest at this rate is to be calculated on the entire amount. The amount already deposited is to be deducted and the remaining amount is to be paid by the Insurance Company. Award to be prepared accordingly.

(T. V. NALAWADE, J.)

Dated:18/01/2016.
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