

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

First Appeal No.2850 of 2008

Yunus s/o Yusuf Shaikh
Age 42 years,
Occupation : Labourer,
R/o Siddharthnagar, Ward No.1,
Taluka Shrirampur,
District Ahmednagar.

.. Appellant.

Versus

The Divisional Controller,
Maharashtra State Road
Transport Corporation
Head Office at Sarjepura,
Taluka & District Ahmednagar.

.. Respondent.

Shri. Rahul A. Tambe, Advocate, for appellant.

Shri. M.K. Goyanka, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 3rd MARCH 2016

JUDGMENT:

1) The appeal is admitted. Notice after admission, made returnable forthwith. Heard both sides by consent for final disposal.

2) The appeal is filed by the original claimants of Claim Petition No.76 of 2002 which was pending before Claims Tribunal, Shrirampur, District Ahmednagar. In the claim filed for compensation in respect of injuries sustained in a motor vehicle accident, the Tribunal has awarded the compensation of Rs.41,500/- and the claimant has challenged the decision on the point of quantum in the present appeal.

3) The accident took place on 26-3-2002 within local jurisdiction of City Police Station Shrirampur. It is the case of the claimant that at the relevant time he was aged about 37 years and by working as coolie in the godowns of the railway he was earning monthly Rs.4,000/-. It is his case that in the accident he sustained injuries to his right hand and even after the treatment he is not fully recovered. He has contended that due to permanent disability he cannot work as coolie and there is no other source of income to him. He had claimed Rs. One lakh. The claim was contested by the MSRTC, respondent.

4) To substantiate the claim, claimant examined himself and he gave evidence as per the aforesaid contentions. He examined Dr. Bhagwat Murade, Orthopedic Surgeon to prove that due to the injuries he is suffering from permanent disability. The evidence of the doctor shows that there was fracture to all fingers of right hand and due to this injury, there is permanent disability to the extent of 30%. The evidence and the certificate at Exhibit 34 show that due to the injuries he cannot close the fist, he has no firm grip and he will be suffering from pains also.

5) The claimant examined one Dhananjay Jadhav to prove that he was working as a coolie in the go-downs of railway but no independent evidence is given to prove that he was making particular income per month.

6) The Tribunal has considered one admission given by the doctor in the cross-examination that condition of the claimant is improved. The Tribunal has held that there is possibility of variance in the percentage of the disability. In view of this possibility, in stead of ascertaining the extent of future loss of income, the

Tribunal has awarded amount of Rs.25,000/- only under the head of loss of future income. Under the head of amount spent on treatment and medicines amount of Rs.7,500/- is given and under other heads like pains and sufferings and the amount spent on special diet, total amount of Rs.5,000/- is awarded as compensation. Under the head of loss of income during treatment some amount is given.

7) The aforesaid approach of the Tribunal was not proper. The Tribunal ought to have calculated the loss of future income by following proper procedure. The Tribunal on one hand has believed that the claimant was working as coolie and on the other hand the aforesaid approach is shown by the Tribunal. For a coolie use of both hands is required, for lifting heavy goods like bags and for that firm grip on the articles lifted is also required. In view of the nature of injuries and the evidence given by the doctor this Court holds that the earning capacity has certainly come down. It is clear that he cannot use force by using right hand even for doing work of digging, hard labour work.

8) Learned counsel for the insurance company placed reliance on a case reported as **(2015) 10 SCC 506 (Rajan v. Soly Sebastian)**. The facts and circumstances of each and every case are always different and this Court has considered the relevant facts of the present matter.

9) The accident took place in the year 2002 and at that time the notional income can be presumed as Rs.3000/- per month. This Court holds that earning capacity has come down by 30% and so there is monthly loss of income of Rs.900/- to the claimant. In view of the age of the claimant which was around 37 years, 15 can be adopted as multiplier for calculation of future loss of income. The future loss of income comes to Rs.1,62,000/- ($900 \times 12 \times 15$). This Court holds that amount of Rs.30,000/- needs to be given under the head of permanent disability and loss of enjoyment of life. Amount of Rs.7,500/- needs to be given under the head of amount spent on treatment, medicines and other heads. Amount of 15,000/- needs to be given under the heads like pains and suffering. Thus total amount comes to Rs.2,14,500/-. The judgment & award of the Tribunal needs to be modified & for that

following order is made :-

10) The appeal is allowed. The judgment and award of the Tribunal is modified to make the total amount of compensation as Rs.2,14,500/- (Rupees Two Lakh Fourteen Thousand and Five Hundred Only). This amount is inclusive of the amount which must have been paid on the principle of no fault. Interest at the rate of 9% will be payable on the compensation from date of petition till realisation. Interest will be paid on the remaining amount after deducting the amount which is already paid by the insurance company. Award is to be prepared accordingly.

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

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