IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

First Appeal No. 4296 of 2008

* The New India Assurance Company Ltd. having its Divisional Office at Adalat Road, Aurangabad Through its Senior Divisional Manager, Shri. Vishwas S/o Bansi Gayakwad, Age 52 years, Occupation Service at The New India Assurance Co. D.O. No.1, Adalat Road, Aurangabad. .. **Appellant.**

Versus

1) Sayyad Yusuf s/o Sayyad Ibrahim, Age 29 years,Occupation : Cleaner, R/o Tondoli, Taluka Paithan, District Aurangabad.

2) Suresh Jagannath Mote, Age Major, Occupation: Business, R/o Itkheda, Taluka & District Aurangabad.

3) Shaikh Shamad s/o Sk. Ahmed, age 36 years, Occupation : Driver, R/o Tondoli, Taluka Paithan, District Aurangabad. .. **Respondents.**

Shri. Ajit B. Kadethankar, Advocate, for appellant.

Shri. P.B. Khedkar Advocate, for respondent No.1.

Shri. A.G. Kulkarni, Advocate, for respondent Nos.2 & 3.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed to challenge the judgment and award of Claim Petition No.348 of 2006 which was pending before the Claims Tribunal, Aurangabad. The insurance company has challenged the decision. Both the sides argued for final disposal at admission stage.

2) The accident took place on 28-2-2006 on Jalna Road, Aurangabad. It is the case of the claimant that he was aged about 29 years and he was working as cleaner on Truck bearing No. MH-20-W-7589. It is contended that when he was about to board the truck from cleaner side the truck was put in reverse mode by the driver and due to that he fell down and his left leg came under the left side wheel of clearer side of the truck. It is contended that he sustained fracture injuries to his left leg and even after the treatment he is not fully recovered and he is suffering from permanent disability.

3) It is the case of the claimant that in the past by working as cleaner he was earning monthly Rs.6000/- and he was maintaining his family on this income. It is his case that due to the injury he could not do any work and there is loss of future income. Under various heads he had claimed compensation of Rs. three lakh.

4) The insurance company contested the matter by filing written statement. It denied everything. It is contended that the claimant must prove each and every contentions made by him.

5) To prove the claim, the claimant examined himself and he has placed reliance on copies of police papers, bills of medicines, disability certificate etc. Copy of certificate of insurance was also produced on the record. This record was not seriously disputed by the insurance company.

6) The substantial evidence of the claimant is in accordance with aforesaid contentions. Police papers show that in respect of the accident dated 28-2-2006

crime was registered on the same day against the driver of the truck. Discharge card issued by Mundada Hospital is produced to show that he was indoor patient from 28-2-2006 to 7-3-2006 and the hospital charged Rs.16,250/-. The disability certificate shows that there was fracture of left femur and operation was required to be performed. The disability certificate shows that due to fracture there is permanent disability to the extent of 23%. The disability certificate further shows that due to injuries movement of left leg has come done by 60%. Due to injury there is shortening of the leg by ½ cm and the weight bearing capacity is reduced. Another certificate is produced at Exhibit 36 to show that in future he will be required to undergo one more operation and for that he will require Rs.45,000/-. The employer Mote is examined by the claimant to prove that he was getting Rs.6000/- per month.

7) No evidence is given to prove any kind of breach of conditions of policy by the insurance company. In view of the aforesaid nature of evidence, the Tribunal has presumed that the earning capacity has come down by

23%. The Tribunal has presumed that the monthly income was at least Rs.3000/-. 18 is used as multiplier for calculation of loss of future income though 17 could have been used as multiplier. In any case under other heads and for permanent disability nothing is given to the claimant. Amount of Rs.16,250/- is given by the Tribunal under the head of amount spent and Rs.45,000/- is awarded as compensation under the head of future expenses. For loss of enjoyment of life and pains and sufferings amount of Rs.25,000/- only is given. Thus total amount of Rs.2,58,300/- is given and this amount is on lower side. This Court sees no reason to interfere in the decision given by the Tribunal on the point of quantum of compensation also.

8) In the result, the appeal stands dismissed. Amount, if any, deposited by the insurance company is to be disbursed as per the award made by the Tribunal.

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

rsl