

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

FIRST APPEAL NO. 2694 OF 2016

Jagdish s/o Virbhadra Kante,
Age 31 years, Occu. Nil.,
R/o. Tadmugali, Tq. Nilanga at present,
Dist.Latur.

**...APPELLANT
(Org.Claimant)**

VERSUS

1. Harishchandra s/o Bhagwanrao Yedake,
Age Major, Occu: Business,
R/o. Sham Nagar, 12 No.Pati,
Latur, Tq. Dist. Latur.
2. Sidheshwar s/o Suresh Modi,
Age Major, Occu. Driver,
R/o. Bhisewagholi, Tq. Dist. Latur,
(Deleted)
3. Chola MS General Insurance
Through its Branch Manager,
Branch Chaunda Complex,
Rajiv Gandhi Chowk, Latur,
Tq. Dist. Latur.

**...RESPONDENTS
(Org.Respondents)**

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Respondent no.1 served.

Respondent no.2 deleted.

Advocate for Appellant : Mr. Gastgar Santosh B.
Mr.Chapalgaonkar S. G., Adv., for R/3.

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CORAM : P.R. BORA, J.
Dated: September 28, 2016

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P.C.:-

1. The appellant has filed the present appeal seeking enhancement in the amount of compensation awarded to him by the Motor Accident Claims Tribunal at Latur vide judgment and order passed in Motor Accident Claim Petition No.212/2012.

2. The aforesaid petition was filed by the present appellant seeking compensation on account of injuries caused to him in a vehicular accident having involvement of a Jeep bearing registration No.MH-24-V-649 owned by respondent no.1 and insured with respondent no.3. It was the contention of the present appellant before the Tribunal that because of the injuries caused to him in the alleged accident, he has incurred 15 per cent total disablement. It was his further contention that because of the injuries caused to him, and the disability incurred by him because of the said injuries, he has lost his working capacity as a Medical Representative, which work he was doing prior to the date of the accident. It was his further contention that he may not be able to live his further life

as a normal person. On all such counts, he had claimed compensation of Rs.6,65,000/-. The appellant himself had deposed before the Tribunal and has also placed on record the medical bills. The appellant had also examined Dr.Tapadia (CW-2) who had issued a Disability certificate in his favour. The owner of the vehicle though entered his appearance in the matter, did not contest the petition. The Insurance Company had opposed the claim so made by the appellant on various grounds. It was the contention of the Insurance Company that the permanent disablement has not resulted in causing any loss in the earning capacity of the appellant. The percentage of disability was also disputed by the Insurance Company. Learned Tribunal, after having assessed the evidence which was brought on record before it, granted the compensation of Rs.77,847/- inclusive of the compensation paid under the No Fault Liability. Dissatisfied with the amount of compensation so awarded, the appellant has filed the present appeal.

3. Shri Gastgar, learned Counsel for the appellant,

submitted that though ample evidence was brought on record by the appellant as about his income, the Tribunal has ignored the said evidence and has assessed the amount of compensation under the head of loss of future earnings on the basis of notional income of Rs.3,000/- p.m. Learned Counsel further submitted that towards other heads also the Tribunal has awarded a very meager amount of compensation. Learned Counsel further submitted that the Tribunal has lost sight of the fact that because of the permanent disablement caused to the appellant, he may not be able to enjoy the amenities of life as a normal person and, as such, adequate amount ought to have been awarded by the Tribunal. Learned Counsel, therefore, prayed for enhancement in the amount of compensation considering the evidence on record and sought modification in the impugned award to that extent.

4. Shri Chapalgaonkar, learned Counsel appearing for respondent no.3 i.e. Insurance Company, supported the impugned judgment. Learned Counsel submitted that the Bank Passbook which was placed on record by the

appellant before the Tribunal reflects that his income, even in the post accident period, has remained consistently the same as it was prior to meeting with the accident. Learned Counsel submitted that the evidence so placed on record by the appellant himself falsifies his case that the disablement incurred by him has resulted in decreasing his earning capacity. Learned Counsel further submitted that Dr.Tapadia in his examination in chief itself has clarified that the injuries caused to the appellant and the permanent disablement incurred because of the said injuries has not resulted in making the appellant incapable of carrying out the work of Medical Representative which he was doing prior to the accident. Learned Counsel further submitted that the Tribunal has properly appreciated the evidence on record and has rightly determined the amount of compensation and as such, no interference is required in the impugned judgment.

5. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the appellant and the respondent Insurance Company. I

have also perused the impugned judgment and the evidence on record. After having perused the impugned judgment in the light of the evidence brought on record by the appellant, it appears to me that some enhancement in the amount of compensation is certainly required. Though it is true that no concrete evidence has been adduced by the appellant in regard to loss of his earning capacity, it cannot be outrightly rejected that the injuries caused to the appellant and the disablement incurred out of that will certainly have some impact on his efficiency and, ultimately, in his earning capacity. Though it was sought to be canvassed by Shri Chapalgaonkar, learned Counsel appearing for the Insurance Company, referring to evidence of Dr.Tapadia that the appellant can continue to work as a Medical Representative, the further explanation given by Dr.Tapadia cannot be ignored wherein he has stated that the appellant may have certain difficulties while walking fast and climbing up and down. Admittedly, appellant was aged about 28 years when he met with the accident. The entire future life is to be led by the appellant with the aforesaid infirmity. This aspect needs

to be favourably considered and it appears to me that on this count, the compensation amount needs to be enhanced.

6. Though no concrete evidence as about the income is placed on record, the income of the appellant must have been held more than the notional income, considering the nature of work which was being done by the appellant and the qualifications possessed by the appellant, which facts have not been disputed by any of the party to the petition. If the income of the appellant is averagely held to the tune of Rs.10,000/- per month and the loss of income is assessed on the basis of the said income, it appears to me, that will meet the ends of justice. Having regard to the age of the appellant, multiplier of 17 would be applicable. If the annual income of the appellant is multiplied by the said multiplier of 17, eight per cent of the said amount will be payable to the appellant towards the compensation under the head of loss of future income. It comes to Rs.1,63,200/- (Rs. one lac, sixty three thousand, two hundred).

7. It further appears to me that the Tribunal has awarded a very meager amount towards pain and suffering and diet. The Tribunal has awarded Rs.5,000/- towards pain and suffering and Rs.2,000/- towards dietary expenses. Considering the young age of the appellant and the nature of disablement incurred by him, I deem it appropriate to enhance the amount of compensation towards pain and suffering, including therein the dietary and other expenses to the tune of Rs.1,00,000/- (Rs. one lac). The Tribunal has awarded to the appellant the medical expenses of Rs.20,387/-. No enhancement is required in the said amount since the same has been awarded as per the medical bills produced on record by the appellant. The appellant is, thus, found entitled for the total compensation of Rs.2,83,387/- (Rs. two lacs, eighty three thousand, three hundred eighty seven). In the facts and circumstances of the case, it appears to me that this will be the just and fair compensation payable to the appellant, inclusive of the amount of N.F.L. compensation. Save and except the enhancement in the amount of compensation as aforesaid, the other part of the impugned

order shall remain as it is.

The Appeal is allowed in aforesaid terms. No order as to costs.

(P.R. BORA)
JUDGE

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