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

FIRST APPEAL NO.3204 OF 2015

Sakharam s/o Babanrao Jagtap
(Deshmukh), Age 24 years,
Occu. Labour & Business,
R/o Pungala, Taluka Jintur,
District Parbhani ..Appellant

Versus

1. Suresh Pandharinath Kute,
Age Major, Occu. Business,
R/o Devsadi, Taluka Jintur,
District Parbhani

2. The Oriental Insurance Co.Ltd.,
Through its Branch Manager,
Having office at Daulat Building,
Shivaji Chowk, Parbhani,
Taluka and District Parbhani ..Respondents

Mr S.V. Suryawanshi, Advocate for appellant
Mr Manoj Shinde, Advocate h/f Mr M.K. Goyanka, Advocate for respondent No.2

CORAM : V.K. JADHAV, J.

DATE : 7th June 2016

PER COURT

Heard.

2. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Parbhani dated 26th August 2015 in Motor Accident Claims Petition No.130 of 2011, the original claimant has preferred this appeal to the extent of quantum.

3. Facts in brief giving rise to the present appeal are as follows :

4. On 2nd September 2010, the appellant – original claimant was traveling by his motorcycle bearing registration No.MH-22-M-2651 from village Pungala to Jintur for collecting the money. At about 7.00 p.m.. when he reached near Jintur 'T' point in front of one Sanjeri building, one India car bearing registration No.MH-04-CD-4309 came from Jintur side at an excessive speed and gave dash to the motorcycle. In consequence of which, the appellant – original claimant sustained severe injuries and the same resulted into permanent disablement. The appellant – claimant preferred Motor Accident Claim Petition before the Motor Accident Claims Tribunal, Parbhani for amount of compensation under the various heads. It has contended by the appellant – claimant that he was doing milk business and labour work and used to earn Rs.6,000/- per month. After the accident, he is unable to do the work, as prior to the accident on account of permanent disablement sustained by him. The respondent No.1 – owner of the car has strongly resisted the claim petition by filing the written statement. It is denied that the accident took place on account of rash and negligent driving of driver of the car and it is stated that the accident was result of rash and negligent driving by the appellant – original claimant himself. The respondent No.2 – insurer has also strongly resisted the claim by filing the written statement. It is contended in the written statement that the claim is exorbitant and excessive. It is further stated that there is breach of terms of the policy. Therefore, insurer is not liable to pay the compensation.

5. Learned Chairman of the Tribunal, by judgment and award partly allowed the claim petition with proportionate costs and thereby directed the respondents jointly and severally to pay the compensation of Rs.3,59,618/- including no fault liability amount with interest. Being aggrieved by the same, the original claimant has preferred this appeal to the extent of quantum.

6. The learned Counsel for the appellant submits that though the Tribunal, in paragraph 15 of the judgment has observed that there is no reason to disbelieve the disability certificate issued by the doctor, considered only 50% of the disability, as assessed by the doctor in the permanent disablement certificate issued to the appellant – original claimant. Learned Counsel submits that even though the certificate issued by the Orthopedic Surgeon attached to the Government Hospital shows percentage of the disability to the extent of 27% sustained by the appellant – original claimant, the tribunal for no reason considered the said percentage of disablement to the extent of 50% i.e. 14% permanent disablement. Learned Counsel further submits that the tribunal has awarded a meager amount of compensation under the non-pecuniary head and loss of amenities in future.

7. The learned Counsel for respondent No.2 – insurer submits that the respondent No.2 has raised an objection before the tribunal that the author of the disablement certificate was not examined before the tribunal and, therefore, said disablement certificate is not admissible

in evidence. The learned Counsel submits that the tribunal has placed reliance on the said certificate without exhibiting it and further awarded the compensation by considering 50% of the disability assessed by the doctor in the said disablement certificate. The learned Counsel further submits that though the respondent No.2 – insurer has not preferred any appeal or cross-objection, the fact remains that the said disablement certificate is not admissible in evidence and no reliance can be placed on it. The learned Counsel submits that the tribunal has awarded just and reasonable compensation under the non-pecuniary heads. It is submitted that no interference is called for and the appeal is liable to be dismissed.

8. In view of the rival contentions of the parties, the tribunal has framed the issues at Exh.23 and after considering the evidence adduced by the parties in support of their rival contentions, recorded the finding in the affirmative that the accident took place on account of rash and negligent driving by the driver of Indica Car bearing registration No.MH-04-CD-4309. Furthermore, the tribunal has also recorded finding in the negative so far as point raised by the insurance company against the appellant – original claimant to the extent that the appellant – original claimant was not holding valid and effective driving licence. So, in view of above findings, this appeal is restricted to the quantum of compensation.

9. Admittedly, the claimant has not examined the doctor who has issued the permanent disablement certificate, which is marked as

Article 'A'. It appears from the record that the said certificate is issued in Form COMP `B'. It is also a matter of record that the doctor issuing the permanent disablement certificate is an Orthopedic Surgeon and responsible Medical Officer in Civil Hospital, Parbhani. The learned Chairman of the Tribunal has further considered the discharge card and also the medico-legal certificate in respect of injuries sustained by the claimant. Furthermore, the appellant – claimant has also deposed before the tribunal that he was initially treated in the Government Hospital, Parbhani and thereafter shifted to one Spandan Hospital at Parbhani for further treatment. Since he had sustained severe injuries in the accident, which resulted into permanent disablement, he was thereafter referred to one Aadhar Hospital at Nanded. He has further deposed that for a considerable period, he was admitted as an indoor patient in the said hospital at Nanded. He has further explained that in the said accident, he had sustained the fracture injury on two places of the right leg and also sustained head injury. He has further deposed that his right leg was operated twice and further, he has taken the treatment of Neuro Surgeon on account of head injury sustained by him. He has also deposed that injuries sustained by him resulted into 27% permanent disablement and on account of the same he is not able to do the work as it was prior to the accident.

10. The learned tribunal, after considering the contents of the disablement certificate and after considering the M.L.C. at Exh.33 and discharge summary of the said Aadhar Hospital Nanded at Exh.34, for no reason considered 50% of the disability, as assessed by the doctor.

Thus, considering the injuries sustained by the appellant – original claimant mentioned in the medico-legal certificate at Exh.33 and the discharge summary of the Aadhar Hospital at Exh.34, I am of the opinion that the permanent disablement sustained by the appellant – original claimant affected his earning capacity to the extent of 20%. In view of this, the re-calculation of the compensation is necessary so far as the claim of loss of future income is concerned.

11. The tribunal has considered the notional income of the claimant as Rs.3,500/- per month, corresponds to Rs.42,000/- per annum. In view of the above discussion, the permanent disablement sustained by the claimant affects his earning capacity to the extent of 20%. In view of this, the claimant has sustained the loss of future income which comes to Rs.8,400/- per year. After considering the age of the claimant, the tribunal has correctly applied multiplier 18. Thus, the loss of future income comes to Rs.1,51,200/- instead of Rs.1,05,840/-.

12. Furthermore, the tribunal has awarded meager amount under the heads of pain and suffering and loss of amenities in future. It is matter of record that after the accident, the appellant – original claimant remained under treatment as an indoor patient for a considerable period and the learned Counsel appearing for the appellant – original claimant has pointed out that the appellant, even remained under coma. Even after the accident, he was operated twice on his right leg and he had to take treatment of Neuro Surgeon on account of head injury sustained by him in the accident. In view of

this, the appellant – original claimant is entitled for the amount of Rs.25,000/- for pain and suffering. It has also pointed out during course of the argument that the appellant – claimant is not in a position to walk without sticks. In view of this, the appellant – claimant is entitled for amount of Rs.25,000/- for loss of amenities in future.

13. In view of above discussion, the break-up of compensation, for which the appellant – claimant is entitled can be broadly categorised as under :

(I)	Loss of future income	Rs.1,51,200/-
(II)	Medical expenses	Rs.2,43,778/-
(III)	Pain and suffering	Rs. 25,000/-
(IV)	Loss of amenities in future	Rs. 25,000/-
	TOTAL	Rs.4,44,978/-

Hence, I proceed to pass the following order :

ORDER

(I) The appeal is hereby partly allowed with proportionate costs.

(II) The judgment and award dated 26th August 2015, passed by the

Chairman, Motor Accident Claims Tribunal, Parbhani in Motor Accident Claim Petition No.130/2011 is hereby modified to the following effect :

(III) The appellant is entitled to the compensation of Rs.4,44,978/- (Rs. Four lakhs forty-four thousand nine hundred seventy eight) including no fault liability amount with interest at the rate of 7.5% per annum from the date of petition till its realisation and respondents No.1 and 2 are jointly and severally to pay the amount of compensation to the appellant – original claimant.

(III) Needless to say that the amount already paid by the respondent No.2 – insurer is liable to be deducted.

(IV) Rest of the judgment and award stands confirmed.

(V) Award be drawn up as per the above modification.

(VI) Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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