

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

FIRST APPEAL NO.:323 OF 2017

KUDRATALI LIYAKATALI INAMDAR
VERSUS
YOGESH ANNASAHEB SHELAR AND ANOTHER

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Appellant.
Mr. S. D. Tawashikar, h/f Mr. Arun V. Pandao for Respondent No.1.
Mr. Ajit B. Kadethankar, Advocate for Respondent No.2.

WITH
FIRST APPEAL NO.:3398 OF 2016

NATIONAL INSURANCE CO. LTD.
VERSUS
KUDARATALI LIYAKATLAI INAMDAR AND ANOTHER

Mr. Ajit B. Kadethankar, Advocate for Appellant.
Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Respondent No.1.
Mr. S. D. Tawashikar, h/f Mr. Arun V. Pandao for Respondent No.2.

CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORDER:

. Heard finally with consent at admission state.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar dated 16th September, 2015 in MACP No.118 of 2011, the original Claimant has preferred First

Appeal No.323 of 2017 to the extent of quantum and the Respondent / Insurer has also preferred First Appeal No.3398 of 2016 also to the extent of quantum.

3 The Appellant / original Claimant submits that the disablement as certified by the orthopedic surgeon to the extent of 55% affected the earning capacity of the Appellant / Claimant to the extent of 100%. The Appellant / Claimant has completed Diploma in Instrument Engineering. He was serving in the company named and styled as R. S. Enterprises Private Limited, which is subsequently changed into R. S. Process Systems Private Limited prior to the accident as a Senior Service Engineer on the monthly salary of Rs.20,000/-. On account of the injury sustained by him in the accident and the resultant permanent disablement to the extent of 55% as certified by the orthopedic surgeon, the Appellant / Claimant is not able to do any work. He was also terminated by the aforesaid Company after noticing his inability to do the assigned work. However, the learned Member of the Tribunal has considered the loss of earning capacity in the same percentage of permanent disablement. In fact, though the Appellant / Claimant has sustained permanent disablement to the extent of 55%, the same has affected

his earning capacity to the extent of 100%. The learned counsel submits that even the Tribunal has not considered the addition in the income towards future prospects. The learned counsel submits that the Tribunal has awarded a meager amount under the non-pecuniary heads and even not awarded the compensation under the certain non-pecuniary heads.

4 The learned counsel for the Insurer submits that Witness Dr.Bhagwat Murade is not a treating doctor. After the accident, the Claimant has taken treatment in Aditya Birla Hospital, Pune and Saibaba Hospital, Shirdi. He was treated in the said hospitals for the injuries sustained in the accident. He has also undergone operation in the said hospital. Instead of procuring the certificate of permanent disablement from the treating doctors of the said hospitals, the Appellant / Claimant has obtained the certificate from Witness Dr.Murade, who is a private medical practitioner at Shrirampur, District Ahmednagar. Witness Dr.Murade based upon his clinical and radiological examination opined that the Claimant has permanent disability of 55% following the fracture of neck femur right, fracture of shaft femur right, fracture of upper tibia right. Said disability was due to painful restriction of right hip and right knee

movements. However, Witness Dr.Murade has not brought before the Tribunal the documents including X-rays about clinical and radiological examination of the Claimant. The learned counsel submits that Witness Dr.Murade was suggested that Claimant has sustained disability to the extent of 20% and not more than that. Though Witness Dr.Murade has denied the same, his certificate Exhibit – 37 is without any supporting evidence and there is no justification for his opinion about 55% disablement sustained by the Claimant. The learned counsel submits that the Claimant has not examined his employer or representatives of the employer to prove the contents of appointment letter Exhibit – 46, termination certificate Exhibit – 47 and salary certificate Exhibit – 50. The Insurer has not admitted the said certificates, however, the Tribunal has erroneously recorded in the judgment that the counsel representing the Insurer has not seriously disputed the said documents and accordingly exhibited the said documents without any proof. The learned counsel submits that the Claimant has not deposed about his sufferings on account of permanent disablement sustained by him. There is no evidence to draw inference that on account of permanent disablement sustained by the Claimant, his

earning capacity is affected to the extent of 100%. the certificate of termination Exhibit – 47 is a very vague document. In fact, there cannot be any certificate of termination. It has only stated in the certificate Exhibit – 47 that the Claimant has sustained permanent disability according to the doctors / So he is unfit for his job / Hence Company has terminated him from his duties. Witness Dr.Murade has opined that the Claimant would not be able to lift the heavy weight and he cannot walk without support. Witness Dr.Murade has nowhere opined that the earning capacity of the Claimant has been affected to the extent of 100% or to the extent of the percentage of disablement sustained by him. Furthermore, as per the contentions of the Claimant, if he was doing a job of senior service engineer, he has not given details of the nature of his duties. The learned counsel submits that the certificate of his qualification are also not produced before the Tribunal. There are only training certificate and the certificate of diploma in engineering is not produced before the Tribunal. The learned counsel submits that the Tribunal has awarded excessive and exorbitant amount of compensation.

5 The learned counsel for the Respondent No.1 / Claimant submits that the Claimant has stated in his affidavit of

evidence that he has completed Diploma in Instrument Engineering. Though certificate of diploma is not produced before the Tribunal, as per the appointment letter Exhibit – 46, he was under the employment of R.S. Enterprises as a senior service engineer on monthly salary. The computerized pay slip for the month of February 2011 is produced on record and the same is marked as Exhibit – 50. Appointment letter is issued on the letter pad of R. S. Enterprises Private Limited, which is subsequently changed into R. S. Process Systems Private Limited and further computerized pay slip Exhibit – 50 also bears the seal and signature of the said Company. Probably due to the aforesaid reasons, the learned counsel for the Insurer has not raised any objection for exhibiting those documents. Furthermore, in the course of arguments also the counsel representing the Insurer has also not raised any objection to those exhibited documents. The objection about admissibility of the said documents now raised for the first time before this court. The parties should respect the observations made by the Court in the judgment and such observations should not be questioned in the appeal when no such objection was raised before the Court below though opportunity was available. It is thus, clear that as per the

pay slip Exhibit – 50, the Claimant was getting Rs.20,000/- per month as a salary.

6 The learned counsel for Respondent No.1 / Claimant submits that though Witness Dr.Murade was not the treating doctor, however, he is a consulting orthopedic surgeon and he has examined the Claimant clinically and radiologically. In his certificate Exhibit – 37, which is in the form of Form Comp 'B', he has given the details of permanent disablement sustained by the Claimant i.e. fracture of neck femur right, fracture of shaft femur right, fracture of upper tibia right. He has further opined that the said disablement was due to painful restriction of right hip and right knee movements. Thus, Dr.Murade had rightly worked out the percentage of disablement to the extent of 55%. The Claimant was working as senior service engineer. He was terminated by his employer on count of disablement as certified by the doctor. It is specifically mentioned in the termination certificate Exhibit – 47 that the Claimant has sustained permanent disability according to the doctors / So he is unfit for his job / Hence Company has terminated him from his duties. Thus, the Tribunal ought to have considered the aforesaid permanent disablement as certified by Witness

Dr.Murade coupled with termination order issued by the employer that the earning capacity of the Claimant is affected to the extent of 100%. The learned Member of the Tribunal has awarded meager amount under the non-pecuniary head such as pains and sufferings and other heads. Even the Tribunal has not awarded any amount under the head of loss of amenities in future life.

7 I have also heard the learned counsel for Respondent No.1 / owner.

8 On careful perusal of the evidence of the Claimant and other evidence on record, I do not find evidence about the nature of work assigned to the Claimant or being undertaken by him in consonance with the qualification possessed by him. Dr.Murade has only opined that the Claimant is not able to lift the heavy load and that he cannot walk without any support. I do not think that a person, who was working as senior service engineer is supposed to lift the heavy load or that he being a senior service engineer, work at the site. Considering his qualification and position he possessed in the aforesaid Company, I do not think that the Claimant has sustained the loss of earning capacity to the extent of 100%. In

absence of the nature of duties assigned to him or the job he likely to get in future, it is difficult to work out the compensation considering its effect on earning capacity.

9 In the instant case, Dr.Murade was not a treating doctor. However, he is a consulting orthopedic surgeon and he has examined the Claimant clinically and radiologically. In his certificate Exhibit – 37 he has mentioned the details of the permanent disablement sustained by the Claimant i.e. fracture of neck femur right, fracture of shaft femur right, fracture of upper tibia right. He has further opined that the disability is due to painful restriction of right hip and right knee movements. Even considering the said painful restriction of right hip and right knee movements, it is difficult to accept that the Claimant has permanent disability to the extent of 55%. Thus, considering the certificate Exhibit – 37 in Form Comp 'B' and the evidence of Witness Dr.Murade, I am of the opinion that the total percentage of permanent disablement in the instant case would be 25% and not more than that. In absence of any positive evidence about the loss of earning capacity, the same percentage of disablement is taken as a criteria for considering the loss of earning capacity. So far as the salaried income of Claimant as per the

certificate Exhibit – 50 is considered at Rs.20,000/-. In absence of any other positive documentary evidence in the form of certificate about the qualification etc., the said income is considered as an income inclusive of the future prospects.

10 The learned Member of the Tribunal has awarded a meager amount of Rs.20,000/- for pains and sufferings. The Claimant submits that after the accident the Claimant remained hospitalized for the period from 22nd March, 2011 to 5th April, 2011 in Aditya Birla Hospital, Pune and also for some period in Saibaba Hospital, Shirdi. The Claimant has also undergone operation in Aditya Birla Hospital, Pune. As opined by Witness Dr.Murade, the Claimant cannot walk without support. Under these circumstances, the Claimant is entitled for an amount of Rs.70,000/- for pains and sufferings and Rs.50,000/- for loss of amenities in future life. The learned counsel for Claimants submits that Witness Dr.Murade has issued a separate certificate indicating therein that the Claimant would required Rs.1,00,000/- for his future medical treatment. However, the learned Member of the Tribunal has awarded Rs.50,000/- on this count. Though the said certificate is not exhibited and Witness Dr.Murade has not given any opinion about

the future medical treatment, I think that the Tribunal has awarded just and reasonable compensation of Rs.50,000/- towards future medical expenses. The Claimant is also entitled for the actual loss of income from the date of accident till the date of termination Rs.80,000/-.

11 In view of the discussion above, the judgment and award passed by the Tribunal requires modification. The income of the Claimant is now considered at Rs.20,000/- inclusive of future prospects and the loss of earning capacity is considered to the extent of 25%, loss of future income comes to Rs.5,000/- per month corresponds to Rs.60,000/- per annum. Considering the age of the Appellant / Claimant, the multiplier 17 would be appropriate. Thus, the Claimant is entitled for a sum of Rs.10,20,000/- towards loss of future income.

12 In view of the above discussion, the compensation under the different heads can be broadly categorized is as under:

Particulars of the head	Amount
Towards loss of future income (Instead of Rs.22,44,000/- as awarded by the Tribunal)	Rs.10,20,000/-
Towards pains and sufferings (Instead of Rs.20,000/- as awarded by the Tribunal)	Rs.70,000/-

Towards loss of amenities in future life (Tribunal has not awarded any amount under this head)	Rs.50,000/-
Towards Special diet	Rs.20,000/-
Towards travelling expenses	Rs.15,000/-
Towards attendant charges	Rs.9,000/-
Towards medical bills and hospitalization charges	Rs.3,18,000/-
Towards future medical treatment	Rs.50,000/-
Towards actual loss of income	Rs.80,000/-
Total =	Rs.16,32,000/-

13 The Claimant is thus, entitled for the total amount of Rs.16,32,000/- as compensation. Hence, the following order:

ORDER

- I. First Appeal No.3398 of 2016 (National Insurance Co. Ltd. Vs. Kudaratali Liyakatlai Inamdar and another), is hereby partly allowed. No costs.

- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar dated 16th September, 2015 in MACP No.118 of 2011, is hereby modified in the following manner:

“Respondent Nos.1 and 2 shall pay the
compensation of Rs.16,32,000/-

(Rupees Sixteen Lacs and Thirty-Two Thousand only) inclusive of NFL amount to the Petitioner alongwith interest at the rate of 9% per annum from the date of institution of the petition till its full realization.”

III. First Appeal No.323 of 2017 (Kudratali Liyakatali Inamdar Vs. Yogesh Annasaheb Shelar and another), is hereby disposed of in view of the above modification. No costs.

IV. Rest of the judgment and award stands confirmed.

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

VI. In view of the above modification, the Claimant is permitted to withdraw the amount deposited before this Court and the Insurer (National Insurance Company Limited) is entitled to refund of the amount deposited before this Court in excess in consonance with the modified award.

VII. If any amount is paid to the Claimant as per the

impugned judgment and award passed by the Tribunal, the same shall be adjusted in the award as per the above modification.

VIII. Both the appeals are accordingly disposed of.

[V. K. JADHAV, J.]

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