

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 371 OF 2016

AMRUTRAO NARAYANRAO SHINDE
VERSUS
SAYED ISMAIL SAYED HANIF AND ANOTHER

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Advocate for Appellant : Ms. Seema T. Pawar h/f Mr. A.G. Talhar

Advocate for Respondent No.2 : Mr. R.F. Totla

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CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 7.5.2014 passed by learned Chairman, Motor Accident Claims Tribunal, Parbhani, in M.A.C.P. No. 329 of 2008, the original claimant has preferred this appeal to the extent of quantum.
3. Learned counsel for the appellant original claimant submits that the claimant has sustained multiple fracture injuries on his right leg, back and all over body. After the accident, he was immediately shifted to Dhoot Hospital, Aurangabad, where he was operated. The appellant-claimant has sustained fracture injury on his right leg which resulted into permanent disablement to the extent of 21%. The appellant-claimant has proved the disablement certificate in "Form

COMP B” issued by the Government Hospital, Parbhani and the same is marked at Exh.62. The appellant-claimant has also suffered from amputation on his right leg on account of injuries sustained by him in the said accident. However, the learned Chairman of the Tribunal has not considered the amputation sustained by the appellant-claimant. The appellant-claimant was doing the business of fertilizer and grocery shop and he was also personally cultivating his agricultural land. However, the same is not considered by the Tribunal and considered his notional income at Rs.4000/- p.m. The Tribunal has awarded meager amount under non pecuniary heads and also not awarded any compensation under the head of loss of amenities in future life and for having sustained permanent disablement in the said accident.

4. Learned counsel for the respondent insurer submits that the Tribunal has awarded just and reasonable compensation. The appellant-claimant has failed to prove his income from the aforesaid business and also from agricultural sources. Consequently, the Tribunal has considered his notional income at Rs.4,000/- p.m. Furthermore, the Tribunal has also considered the medical expenses and awarded entire amount under medical bills. The appellant-claimant has examined witness No.3 Vijay Hake to prove the contents of medical bills. However, the said witness has deposed

and admitted before the Tribunal that the appellant-claimant used to purchase medicines of diabetics and diabetic strips from his shop. The Tribunal has therefore, rightly observed that there is no evidence to show that whether the amputation was caused on account of injuries sustained by the claimant or due to his diabetic history. The appellant-claimant has not produced any document on record indicating amputation on his right leg on account of injuries sustained by him in the accident. The Tribunal has awarded just and reasonable compensation under non pecuniary heads also. No interference is required. There is no substance the appeal and appeal is liable to be dismissed.

5. It appears from the record and proceeding and the impugned judgment and award that in absence of income proof, the Tribunal constrained to consider the notional income of the appellant-claimant. Learned Chairman of the Tribunal has rightly considered notional income of the appellant-claimant at Rs.4000/- p.m. however, it appears that the Tribunal has committed error while applying he multiplier 12 instead of 13. As per the disablement certificate Exh.62, the appellant-claimant has sustained disablement as detailed in the said certificate to the extent of 21%. The claimant has not examined the doctor, who has issued the said certificate Exh.62. In absence of any positive evidence, the Tribunal has rightly considered the said

percentage as a loss of earning capacity and accordingly awarded just and reasonable compensation under the head of loss of future income. So far as the compensation under non pecuniary head is concerned, it appears that the Tribunal has awarded very meager amount under the head of pains and sufferings, the claimant is entitled for Rs.25,000/- instead of Rs.10,000/-. The appellant-claimant is entitled for amount of Rs.15,000/- towards loss of amenities in future life and Rs.20,000/- on account of permanent disablement sustained by him as a result of injuries sustained in the accident.

6. Thus, the break up of compensation, which can be broadly categorized is as under:-

i)	Loss of future income (as against Rs.1,20,960.00 awarded by the Tribunal)	Rs. 1,31,040.00
ii)	Medical Expenses (awarded by the Tribunal)	Rs. 2,22,523.00
iii)	Compensation towards pains and sufferings. (as against Rs.10,000.00 awarded by the Tribunal)	Rs. 25,000.00
iv)	Loss of amenities in future life.	Rs. 15,000.00
v)	Permanent disablement to the extent of 21% involving right leg.	Rs. 20,000.00

		Total Rs.4,13,563.00
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Thus the appellant-claimant is entitled for total compensation of Rs.4,13,563.00.

7. In view of the above, I proceed to pass the following order:-

O R D E R

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

II. The judgment and award dated 7.5.2014 passed by the learned Chairman, M.A.C.T. Parbhani in M.A.C.P. No. 329 of 2008 is hereby modified in the following manner:-

“The respondent Nos. 1 and 2, jointly and severally do pay to the appellant-claimant an amount of Rs.4,13,563.00 (Rupees Four lacs thirteen thousand five hundred sixty three), inclusive of “no fault liability” amount with interest at the rate of 7.5% p.a. from the date of petition till realization.”

III. Rest of the judgment and award stands confirmed.

IV. The award be drawn up as per the above modification.

V. Needless to say that if any amount is paid by the respondent insurer as per the earlier judgment and award passed by the Tribunal, the same shall be adjusted in the award, as modified above.

VI. First appeal is disposed of accordingly.

(V. K. JADHAV, J.)

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