

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

FIRST APPEAL NO. 1283 OF 2009

DALCHAND DEOLAL PARDESHI
VERSUS
RAMKUMAR PASWAN LAKHAN PASWAN AND OTHERS

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Advocate for Appellants : Mr Gopal C Navandar
Advocate for Respondent 3 : Mr D P Deshpande
Appeal dismissed as against Respondent No.1.

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CORAM : V.K. JADHAV, J.

Dated: July 31, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor accident Claims Tribunal, Aurangabad dated 31.1.2009 in MACP no.313/2005, the original claimant has preferred this appeal to the extent of quantum.
3. The learned counsel for the appellant-claimant submits that, though the appellant-claimant has examined PW 2 Shri Dubey and succeeded in proving the contents of the salary certificate exh.65, the

tribunal has not considered the same and taken notional income of the appellant-claimant for consideration. Learned counsel submits that, even though the tribunal has considered notional income of the appellant-claimant at Rs.4,000/- p.m., the tribunal has not considered said income as of a skilled labour. The appellant-claimant was working on lathe-machine prior to the accident and as such tribunal ought to have considered his income as of a skilled labour. The tribunal has awarded lumpsum compensation to the appellant-claimant for having sustained permanent disablement to the extent of 90%. The learned Member of the tribunal for no reason has made departure from multiplier method while calculating the amount of compensation under the head of future loss of income. Learned counsel submits that the tribunal has awarded less amount under medical expenses though the appellant-claimant has produced on record medical bills, medicines purchase etc. Learned counsel submits that the tribunal has awarded very meager amount under the head of pains and sufferings though the

appellant-claimant suffered from amputation of his right leg above the knee and further suffered various complications like formation of pus and infection to imputed stump.

4. Learned counsel for respondent-insurer submits that, though the appellant-claimant has examined his employer PW 2 Mr. Dubey, the said witness has failed to produce on record pay roll, attendance roll and other mandatory registers. The learned Member of the tribunal has, therefore, rightly come to the conclusion that oral evidence of PW 2 Dubey is not sufficient to believe that the appellant-claimant was appointed by him to work on lathe-machine on monthly salary of Rs.6,000/-. The tribunal has, therefore, rightly considered notional income of the appellant-claimant at Rs.4,000/- p.m. Learned counsel submits that, in paragraph no.12 of the judgment, the tribunal has observed that on examination of all bills, it appears that, some of the bills are, in fact, not the bills, but are estimates and some are on plain papers and, therefore,

some bills require to be discarded from consideration. The tribunal has therefore considered those bills which appears to be genuine and accordingly awarded compensation of Rs.68,000/- under the head of medical expenses. Learned counsel submits that, the tribunal has awarded Rs.1,50,000/- for permanent disablement and as such, said amount of compensation also covers the head of pains and sufferings. The tribunal has awarded just and reasonable compensation. No interference is required.

5. On perusal of the pleadings, evidence and impugned judgment and award passed by the tribunal, it appears that, though the appellant-claimant has examined his employer PW 2 Dubey, said witness has failed to substantiate that he was paying Rs.6,000/- p.m. to the appellant-claimant as salary. The learned Member of the Tribunal has rightly observed that, in absence of any evidence like the pay roll, attendance roll or other mandatory registers, bare words of PW 2 Dubey are not sufficient to believe the salary certificate exh.65.

The learned Member of the tribunal has considered the notional income of the appellant-claimant at lower side. It appears from the evidence that the appellant-claimant was working on lathe-machine prior to the accident and even on the date of accident he was in search of lathe-machine for starting his own unit. Under these circumstances, it would be just and appropriate if the notional income of the appellant-claimant is considered at Rs.4,500/- instead of Rs.4,000/-.

6. It further appears from the impugned judgment and award passed by the tribunal that the learned Member of the Tribunal for no reason made departure from the multiplier method and awarded the lumpsum compensation to the appellant-claimant who has suffered 90% of permanent disablement of right limb on account of the amputation of his right leg above knee. It appears from the various documents such as medical certificate, admission and discharge certificate, medico-legal certificate that age of the appellant-claimant is in between 51 to 55 years. In view of the same, relevant

multiplier would be '11'. The appellant-claimant has examined witness no.3 Dr. Rajiv Mohgaonkar. He is head of department of Orthopedics in Seth Nandlal Dhoot Hospital, Aurangabad. The appellant-claimant was admitted in the said hospital. Witness Dr. Mohgaonkar issued permanent disablement certificate in form comp 'B' exh.69. There is amputation of right leg above knee and according to the expert opinion of Dr. Mohgaonkar, the appellant-claimant has permanent disablement of right lower limb to the extent of 90%. It is thus clear that, the appellant-claimant cannot walk without help of crutches and he would not be in a position to work on lathe-machine in standing position for hours. Even it is not possible for the appellant-claimant to do labour work. In view of the same, the appellant-claimant has lost his earning capacity to the extent of 100%. Thus, the appellant-claimant is entitled for an amount of compensation of Rs.5,94,000/- (4,500 x12x11) under the head of loss of future income. It appears that, the learned Member of the tribunal has awarded a separate amount under the head of

permanent disablement. However, the tribunal has awarded very meager amount under the head of pains and sufferings. The claimant has undergone operations and suffered from various complications such as infection to the amputated stump and further amputation of right leg above knee. The tribunal has awarded Rs.10,000/- under the head of pains and sufferings, it would be just and appropriate if Rs.40,000/- is added into that. The appellant-claimant is entitled for Rs.50,000/- under the head of pains and sufferings. The appellant-claimant is also entitled for an amount of Rs.50,000/- for loss of amenities in future life since the tribunal has not awarded any compensation under the said head. The appellant-claimant is also entitled for an amount of Rs.50,000/- for future medical treatment/purchase of artificial leg etc. as token amount. In view of the above, the compensation as awarded by the tribunal requires re-determination.

7. Thus, the break up of the compensation awardable to the claimant under various heads which can be

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broadly categorized is as under :-

1	Loss of future income/dependency (as against Rs.2.00 lac awarded by the tribunal)	Rs.5,94,000/-
2	Permanent disablement (awarded by the tribunal)	Rs.1,50,000/-
3	Medical expenses (awarded by the tribunal)	Rs.0,68,000/-
4	Transportation (awarded by the tribunal)	Rs.0,05,000/-
5	Diet expenses awarded by the tribunal	Rs.0,05,000/-
6	Pains and sufferings (as against Rs.10,000/- awarded by the tribunal)	Rs.0,50,000/-
7	Loss of amenities in future life	Rs.0,50,000/-
8	Future medical expenses including purchase of artificial leg	Rs.0,50,000/-
	TOTAL	Rs.9,72,000/-

8. Thus, the appellant-claimant is entitled for the total compensation of Rs.9,72,000/- (Rs.Nine lacs seventy two thousand) with interest as awarded by the tribunal.

9. Thus the impugned judgment and award passed by the tribunal requires modification. Hence, order.

O R D E R

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

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2. The judgment and award passed by the Member, Motor accident Claims Tribunal, Aurangabad dated 31.1.2009 in MACP No.313/2005 is hereby modified in the following manner :-

a] Respondents shall, jointly and severally, pay an amount of Rs.9,72,000/- (Rs.Nine lacs seventy two thousand) to the claimant, [including the amount of no Fault Liability] as compensation under section 166 of the Motor Vehicles Act.

3. Rest of the judgment and award stands confirmed.

4. Award be drawn up as per the above modifications.

5. If any amount is paid as per the judgment and award passed by the tribunal, the same shall be the part of the award after modification.

6. Appeal is accordingly disposed of.

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(V.K. JADHAV, J.)

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