

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

FIRST APPEAL NO. 1439 OF 2007

Shaikh Kamal s/o Shaikh Bapuji,
age 42 years, occ. Driver,
R/o Lane No. 12, Sadat Nagar,
Railway Station, Aurangabad,
District Aurangabad

... Appellant
Orig. Claimant

VERSUS

1] Kailash s/o Nanabhau Bhogawade,
age major, occ. Driver,
R/o Golegaon, Tq. Shirur,
District Pune,

2] Vitthal s/o Baban Hinge,
age major, occ. Business,
R/o Khandale, Post Ranjangaon,
Ganpati, Taluka Shirur,
District Pune,

3] National Insurance Co. Limited,
through Divisional Manager,
Hazari Chambers, Station Road,
Aurangabad,
District Aurangabad

... Respondents

.....

Mr. S.G.Chapalgaonkar, advocate for the appellant
Mr. R.C.Bafna, advocate h/f
Mr. P.F.Bafna, advocate for respondent no.3

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CORAM : K.L.WADANE, J.

**RESERVED ON : 10.08.2017
PRONOUNCEMENT ON : 14.08.2017**

J U D G M E N T :

Being aggrieved by the judgment and award, passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 233 of 2002, dated 19.4.2004, by which the claim of the claimant/appellant was partly allowed, the original claimant has preferred this appeal for enhancement of compensation.

2. Brief facts of the case are as follows.

The parties are hereby referred by their original status. The claimant was driver of tempo bearing registration No. MH-20/A-5568 from Pune to Aurangabad. At about 1.00 a.m. a truck bearing registration No. MH-14/F-7805 driven by opponent no.1 came with high speed from opposite side and gave tremendous dash to the tempo, due to which tempo turned turtle. The accident occurred due to negligence of the truck driver opponent no.1 owned by opponent no.2 and insured with opponent no.3. In the accident, the claimant received fracture injury to his leg. Therefore, he was taken to the

hospital. After medical treatment the claimant was discharged and the concerned doctor assessed his permanent disability initially at 15 per cent and after six months it is assessed to the extent of 32 per cent. Hence, the claimant has claimed total compensation of Rs. Four Lacs on all counts.

3. Opponent nos. 1 and 2 did not appear. Opponent no.3 insurance company resisted the claim on the ground that the truck driver was not holding driving license and the owner and the insurer of the tempo have not been joined as necessary parties and thirdly the claimant himself was negligent while driving the vehicle.

4. I have heard Mr. Chapalgaonkar, learned counsel appearing for the claimant/appellant and Mr. Bafna, learned counsel for respondent no.3 insurance company.

5. During the course of arguments, both the learned counsel for the parties have restricted

their arguments to the extent of quantum of compensation only. Therefore, it is not necessary to discuss the other evidence on record. Further more, the learned counsel for the parties have not argued about the percentage of negligence determined by the learned Tribunal i.e. 80 per cent of respondent no.1 and 20 per cent of the claimant. So, only question remains about examination of the pleadings and oral as well as documentary evidence on record to know whether the learned Tribunal has properly assessed the compensation or not.

6. The details of compensation awarded by the Tribunal are given in last para of the judgment.

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|---|-------------|
| 1. Pain and suffering | Rs.15,000/- |
| 2. Expenses including of all | Rs.15,000/- |
| 3. Loss of 3 months earning | Rs. 9,000/- |
| 4. Compensation for loss of amenities of life | Rs.10,000/- |
| 5. Loss of capacity to earn in future | Rs.15,000/- |

7. From the evidence on record and observations of the learned Tribunal, it appears that in absence of specific evidence, the learned Tribunal has fixed the monthly earning of the claimant to the extent of 3,000/- per month. Considering the date of accident, I am of the opinion that such assessment of the monthly earning is proper. The receipt issued by Dr. Kabra is placed on record and from the said receipt it appears that the medical expenses incurred by the claimant are to the tune of Rs.15,000/-. So, the compensation determined at Sr. Nos. 1 to 4, as referred above, appears to be just and proper, however, the compensation assessed by the learned Tribunal on account of loss of earning capacity in future is estimated to the extent of 15,000/- only.

8. There is no dispute that at the time of accident, the claimant was holding a valid driving license, and therefore, his earning is considered to the extent of 3,000/- per month. The learned

Tribunal has refused to award the loss of future earning of the claimant/appellant only because the license of the claimant is renewed thereafter. Even accepting that the claimant has renewed his driving license, it does not mean that he has not lost his earning capacity, since he has received fracture injury to his leg and implants were fixed in the leg. Subsequently after about one year, those implants were removed. Considering the nature of injury and percentage of disability i.e. to the extent of 32 per cent, definitely working capacity of the claimant is reduced to some extent. With such disability the claimant will not be able to drive the heavy vehicle continuously. Therefore, his loss of future earning has to be considered to the extent of percentage of disability caused to the claimant. Therefore, to that extent the amount of compensation has to be calculated based upon the reduction of working capacity to the extent of 32 per cent.

9. The yearly income of the claimant is considered to be 36,000/-, out of which $1/3^{\text{rd}}$ is to be deducted for self-expenses. After such deduction, it comes to 24,000/- per annum. Applying 32 per cent functional disability, the claimant/appellant will be entitled to the compensation of 32 per cent of 24,000/-, which comes to Rs. 7,680/-. At the time of accident the claimant was aged about 42 years and there is no dispute about the same. Looking to the age of the claimant, it appears, the proper multiplier of 14 is applicable. Hence, Rs.7,680 x 14 comes to Rs.1,07,520/- plus the proper compensation determined by the Tribunal on account of pains and sufferings, medical expenses, loss of salaries and loss of amenities in the life is calculated to the extent of 49,000/-. Hence, total comes to Rs.1,56,520/-, out of which the claimant is entitled to the extent of 80 per cent, which comes to Rs.1,25,216/-, together with six per cent interest per annum from the date of petition till its realization.

10. Hence, the following order.

(i) The appeal is partly allowed.

(ii) The opponents are jointly and severally liable to pay the compensation to the claimant to the extent of Rs.1,25,216/-, together with six per cent per annum interest from the date of petition till its realization.

(iii) The impugned award stands modified accordingly.

(iv) The appeal is disposed of with no order as to costs.

(K.L.WADANE, J.)

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