

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

37 FIRST APPEAL NO. 1603 OF 2004

Kashinath Suresh Chaudhary
Aged : 23 years, Occu : Labour,
R/o. Fagne, Taluka & Dist. Dhule

.. Appellant
(Ori. Claimant)

VERSUS

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| <p>1. Shivaji Vishnu Vitekar
Aged : Adult, Occu : Driver,
R/o. Nandur, Taluka : shrirampur,
Dist. Ahmednagar.</p> | <p>(deleted vide Registrar
order dt.28.08.2008)</p> |
| <p>2. Aziz Baksha Sattar Baksh
Aged : Adult, Occu : Business,
R/o. Implipura, Khandwa, Tal. &
Dist. Khandwa (M.P.)</p> | <p>(appeal dismissed
against Respondent
No.2 vide registrar
order 21.07.2009)</p> |
| <p>3. National Insurance Company Ltd.,
Notice to be served upon the
Branch Manager, Dhule Branch,
Dhule, Taluka & Dist. Dhule</p> | <p>.. Respondents
(Ori. Opponent)</p> |

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Advocate for Appellant : Shri. M.H. Patil
Advocate for Respondents No.3 : Shri. R.C. Bora h/f. Shri. P.P. Bafna

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**CORAM : P.R. BORA, J.
Dated: July 24, 2017**

PER COURT :-

. The original claimant has filed the present appeal claiming enhancement in the amount of compensation awarded to him by the

Motor Accident Claims Tribunal at Dhule in Motor Accident Claim Petition No.975/1999 decided on 17.03.2004.

2. The appellant, who is hereinafter referred to as claimant, had filed the aforesaid petition claiming compensation on account of injuries caused to him in a vehicular accident happened on 18.11.1998 having involvement of a truck bearing registration no.MP-12-B-1586 and an auto rickshaw bearing registration no.MWD-1741.

3. It was the contention of the claimant that, while he was travelling by the aforesaid auto rickshaw, it was dashed by the aforesaid truck and in the accident so happened, he was severely injured. It was further contention of the claimant that, the accident happened because of the negligence on part of the driver of the truck. It was further contention of the claimant that, because of injuries caused to him in the alleged accident, he incurred 60% permanent disability. The claimant had, therefore, claimed the compensation of Rs.Three Lakhs from the owner and insurer of the offending truck.

4. Before the Tribunal, the claimant himself deposed to substantiate his claim and also filed on record the disability certificate and the other medical papers pertaining to the treatment taken by him during the relevant period and the expenses incurred by him on his treatment. The tribunal after having assessed the oral and documentary evidence brought on record, held the claimant entitled for the compensation of Rs.One Lakh jointly and severally from the owner and insurer of the truck. Dissatisfied with the amount of compensation so awarded the claimant has filed the present appeal seeking enhancement in the amount of compensation.

5. Shri. Mahesh Patil, learned Counsel appearing for the claimant submitted that, the Tribunal has failed in appreciating that, the claimant has incurred 60% permanent disability at his young age and it would have adverse effect on his entire future career. The learned Counsel submitted that, the tribunal has awarded a very meager sum by way of compensation to the claimant. The learned Counsel submitted that, the tribunal has not considered the aspect of the future loss of income. The learned Counsel submitted that, the tribunal has also not awarded just compensation for pains and suffering and for loss of amenities in life. The learned Counsel submitted that, the claimant was a wrestler and because of injuries caused to him, he was prevented from making a career in wrestling. However, the said loss has not been considered by the tribunal. The learned Counsel, therefore, prayed for dismissal of the appeal.

6. Shri. Bora, the learned Counsel appearing for the respondent- Insurance Company supported the impugned Judgment and Award. The learned Counsel submitted that, the Tribunal has correctly assessed the amount of compensation, which is just and fair in the facts and circumstances of the case. The learned Counsel submitted that, no case for enhancement is made out by the claimant. The learned Counsel, therefore, prayed for dismissal of the appeal.

7. I have carefully considered the submissions advanced by the learned Counsel for the claimant and the learned Counsel for the respondent Insurance Company. I have perused the impugned Judgment, the evidence on record and the other material placed on record.

8. On the date of accident, the claimant was admittedly a school going boy and his age was around 16 years. Though the claimant

is claiming to have incurred 60% permanent disability, on perusal of the documents in this regard more particularly certificate issued by Dr. K.A. Saindane, the Orthopedic Surgeon, the discharge summery of the hospital of Dr. Nikhil Shah and certificate issued by Dr. Rajesh H. Oswal, the Dental & Oral Surgeon as well as the disability certificate issued by the General hospital, Dhule, it is revealed that, it is not the disablement for the body as a whole, but was restricted to the particular organs. Moreover, there is nothing on record to show as to in what way the injuries caused to the claimant had resulted in causing loss in his earning capacity. The record reveals that, the claimant had suffered fracture maxilla, and fracture to mandible, fracture tibia fibula with dislocation of the talus. These injuries are not likely to result in causing permanent disability to the extent of 60%. Further though the claimant has claimed that, he had sustained head injury and also sustained the internal injury to his brain, the discharge card from the hospital of Dr. Nikhil Shah demonstrates that, on the date of his discharge from the said hospital, the claimant was not having any neurological deficit and he was fully alert.

9. Though the appellant is claiming enhancement in the amount of compensation as awarded by the tribunal on account of the permanent disablement, no sufficient and cogent evidence is placed on record by the appellant so as to enhance amount of compensation. Nothing is brought on record by the appellant to prove his functional disability. Having regard to the evidence on record, it appears to me that, the compensation of Rs.60,000/- awarded by the tribunal towards the permanent disablement is just and proper and no case for enhancement is made out by the appellant.

10. The record further shows that, the tribunal has awarded the entire medical expenses of which the bills were produced on record by the appellant. The appellant had placed on record the medical bills worth Rs.37,762/-. The tribunal has awarded a sum of Rs.40,000/- towards the medical expenses and for pain & suffering. It is thus evident that, after deducting the medical expenses of Rs.37,762/-, a meager amount of Rs.2238/- has been awarded by the tribunal towards the pain & suffering. It is apparent that, the amount of compensation so awarded is wholly unjust and inadequate. It cannot be disputed that, because of injuries caused to the appellant, he would certainly face some difficulties in enjoying the amenities of life and would not be able to enjoy the same as a complete normal human being. I am, therefore, inclined to enhance the amount of compensation under the said head and I quantify the said amount to Rs.50,000/-. The appellant is thus held entitled for the compensation of Rs.1,50,000/- in total. It is clarified that, the appellant will be entitled for the interest on the enhanced amount of compensation i.e. Rs.50,000/- at the rate of 9% per annum from the date of application till its realization. Award be modified accordingly. Appeal stands allowed to the aforesaid extent.

(P.R. BORA, J.)

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