

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

FIRST APPEAL NO.3169 OF 2016

Bharat S/o. Kondiram Gavali
Age : 40 years, Occu : Business, Now Nil,
R/o. Sapnai, Tq. Kallam, Dist. Osmanabad

.. APPELLANT
(Orig. claimant)

VERSUS

1. Adinath S/o Tukaram Solat
Age : Major, Occu : Business,
R/o Miri, Tq. Pathardi,
Dist. Ahmednagar
(Owner of Indica Car No. MH-16-AT-2744)
2. The Oriental Insurance Co. Ltd., Mumbai,
Through : The Branch Manager,
The Oriental Insurance Co. Ltd.,
Marwad Galli, Osmanabad.
(Insurer of Indica Car No. MH-16-AT-2744)

.. RESPONDENTS

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Advocate for Appellant : Shri. Dhananjay Mane h/f.
Shri. Bharat Pankaj A.
Advocate for Respondent No.1 : Shri. R.S. Kasar
Advocate for Respondent No.2 : Shri. A.G. Kanade

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CORAM : PR. BORA, J.

RESERVED ON : 21.07.2017
PRONOUNCED ON : 11.09.2017

JUDGMENT :

1. The appellant – original claimant has filed the present appeal seeking enhancement in the amount of compensation as has

been awarded by the Motor Accident Claims Tribunal at Osmanabad (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No.23/2013 decided on 10.10.2014.

2. The appellant had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him in a vehicular accident happened on 22.10.2012, having involvement of a motorcycle bearing registration no.MH-13-H-3572 and a car bearing registration no.MH-16-AT-2744 (hereinafter referred to as the 'offending car'). It was the case of the appellant that, on 22.10.2012 when he was proceeding on his motorcycle from Sapnai to Yermala, offending car coming from the opposite direction gave him a dash and in the accident so happened he was severely injured. It was the further contention of the appellant that, because of the injuries caused to him in the alleged accident, he incurred 48% permanent disability. It was his further contention that, though physical disability was to the extent of 48%, he lost his total earning capacity. The appellant had alleged that, the alleged accident happened because of the rash and negligent driving of the car driver. The appellant has, therefore, claimed the compensation of Rs.15,00,000/- jointly and severally from the owner and insurer of the offending car. For the purposes of court fee, the appellant had

restricted his claim to Rs.10,00,000/-. Respondent no.1 is the registered owner of the offending car and the same was insured with respondent no.2 Insurance Company.

3. In order to substantiate the claim so raised by him, the appellant himself deposed before the Tribunal and also examined Dr. Anand Kulkarni as his witness. The appellant had also placed on record the relevant police papers pertaining to the accident in question, the disability certificate in his favour and the documents pertaining to the treatment taken by him at Jagdale Mama Hospital and at the Viraj Institute at Barshi. The appellant had also placed on record all relevant medical bills.

4. Both the respondents, though had resisted the claim on various grounds through their respective written-statements, did not adduce any oral or documentary evidence.

5. The learned Tribunal, after having assessed the oral and documentary evidence brought before it, held the claimant entitled for the total compensation of Rs.7,43,000/- jointly and severally from the respondents with interest thereon at the rate of 7% per annum from the date of petition till realization. According to the appellant,

the compensation as has been awarded by the Tribunal is unjust and inadequate. The claimant has, therefore, preferred the present appeal seeking enhancement in the amount of compensation awarded by the Tribunal.

6. Shri Mane, learned Counsel appearing for the appellant submitted that, the Tribunal has failed in appreciating that, the appellant had lost his total earning capacity because of the permanent disablement incurred by him as a result of the injuries caused to him in the alleged accident. The learned Counsel submitted that, though the physical disability as has been incurred by the appellant is quantified to the extent of 48%, while determining the amount of compensation, what was to be considered by the Tribunal was the loss in earning capacity of the appellant. The learned Counsel submitted that, without considering the evidence on record, the learned Tribunal on the basis of the physical disablement has assessed the future loss of income of the appellant. The learned Counsel further submitted that, the Tribunal has also erred in not awarding the adequate compensation towards hospital and medicine bills. The learned Counsel submitted that, the appellant had placed on record all relevant medicine bills worth around Rs.5,00,000/-, but without assigning any reason, the Tribunal has awarded only a sum

of Rs.2,43,000/- towards the hospitalization and medication. The learned Counsel further submitted that, the compensation as has been awarded by the Tribunal towards conveyance, diet & attendant charges is unjust and inadequate. The learned Counsel submitted that, towards the pain and agony and for loss of the enjoyment of amenities of life also the Tribunal has awarded meager compensation which in no case can be said to be just and adequate. The learned Counsel further submitted that, though sufficient evidence was adduced as about the future medical expenses, the Tribunal without assigning any reason has not awarded the entire said amount and instead has granted the compensation only to the tune of Rs.50,000/-. The learned Counsel in the aforesaid circumstances prayed for enhancement in the amount of compensation and to modify the award accordingly.

7. The learned Counsel for respondent no.1 and respondent no.2 have supported the impugned Judgment and award. The learned Counsel submitted that, the amount of compensation as has been awarded by the Tribunal is fair, just and adequate. The learned Counsel submitted that, no such case is made out by the appellant for enhancement in the amount of compensation. The learned Counsel, therefore, prayed for dismissal of the appeal.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties.

9. As has come on record, the appellant was carrying on the business of selling sweets. More particularly, the sweet known as 'pedha'. On the date of accident the age of the appellant was 38 years. As was pleaded in the petition, at the relevant time the appellant was earning approximately Rs.9,000/- per month.

10. As deposed by Dr. Anand Kulkarni (PW No.2) the appellant had sustained the following injuries :

- (i) Head injury with right eye CLW
- (ii) Blunt trauma to right shoulder with fracture, right cavical and right scapula
- (iii) Grade I compound fracture, lower third-middle third, right humerus with one butterfly fragment with fracture medial condyle, right humerus with redial nerve palsy
- (iv) Grade II to compound fracture lower third - middle third right femur,
- (v) Blunt trauma to right foot with fracture sharp third metatarsal and
- (vi) Displaced sub trochanteric fracture right femur
- (vii) Blunt trauma chest.

11. The physical disability incurred by the appellant because of the accidental injuries was also assessed by Dr. Anand Kulkarni (PW No.2). During the course of his evidence before the Court, the disability certificate issued by him was duly proved and was marked Exh.36. As certified by Dr. Kulkarni the appellant had incurred 48% permanent disability. Dr. Kulkarni also deposed about the estimate of the future medical expenses. As noted earlier, it is the case of the appellant that, the percentage of his physical disablement may be to the extent of 48%, loss in his earning capacity is 100%.

12. In view of the evidence on record and the grounds raised by the appellant, it has to be first examined 'whether the compensation as awarded by the learned Tribunal towards future loss of income can be held to be just and adequate or needs to be enhanced as prayed by the appellant'. As was deposed by the claimant, he was carrying on the business of selling sweets. It was the case of the claimant before the Tribunal that, he used to prepare the sweets at his home and used to sell the said sweet at Yedeshwari temple at Yermala. It was his further contention that, from the said business he used to earn around Rs.9,000/- per month. It was his further contention that, after having met with the accident and after

having incurred the permanent disablement to the extent of 48%, he has become incapable of carrying on his business and is thus subjected to suffer loss to the extent of 100% in his earning capacity.

13. Perusal of the impugned judgment shows that, Tribunal has assessed the amount of compensation under the head of future loss explicitly relying upon the physical disability certificate. The Tribunal has held the income of the appellant to the tune of Rs.4500/- per month as net income for the purpose of determining the amount of compensation and 48% of the same is made payable to the appellant jointly and severally from the owner and insurer of the offending car.

14. After having considered the evidence on record, more particularly the facts as deposed by the appellant in his testimony before Court and the facts which have come on record through the evidence of PW No.2 Anand Kulkarni as about the injuries caused to the claimant and the permanent disablement incurred by him because of the said injuries, it appears to me that, the learned Tribunal has committed an error in assessing loss in earning capacity of the appellant at par with the percentage of the disability. From the evidence on record and the nature of injuries caused to the appellant,

a reasonable inference can be drawn that, henceforth the appellant may not be able to carry on his business of selling sweets at Yedeshwari temple at Yermala. Even for preparation of sweets he will have to take assistance of somebody and he alone may not be able to do the said work. It appears to me that, the loss caused in his earning capacity has to be assessed to the extent of 75% and accordingly the amount of compensation needs to be determined. Insofar as the income as has been assessed by the Tribunal, there seems no reason to cause any interference. The Tribunal has held the net annual income of the appellant to the tune of Rs.54,000/-. The future loss of income, which the appellant is likely to suffer, would be thus 75% of the said amount, which comes to Rs.40,500/-. The Tribunal has rightly applied the multiplier of 15. By applying the said multiplier, the amount of future loss comes to Rs.6,07,500/-. I hold the appellant entitled for the said amount.

15. The compensation, as has been awarded by the Tribunal, towards hospitalization, medical bills etc., for diet and attendant expenses and for conveyance appears just and proper. No case is made out for enhancement in the compensation awarded under the said heads.

16. The compensation awarded by the Tribunal towards future treatment, however, needs some enhancement. The Tribunal has awarded sum of Rs.50,000/- towards the future treatment. In his evidence before the Court PW No.2 Dr. Anand Kulkarni has specifically deposed that, the appellant has been advised to undergo further operation for removal of implant and bone grafting for un-united fractures of right humerus and the said operations may cost Rs.70,000/- to Rs.1,00,000/-. In view of the aforesaid evidence, the Tribunal must have awarded the compensation at least of Rs.70,000/- and not less than that. I, therefore, enhance the amount of compensation towards the future medical expenses by Rs.20,000/-.

17. Similarly, the Tribunal has awarded the compensation of Rs.15,000/- towards pain and agony and Rs.10,000/- towards loss of enjoyment of life. The compensation so awarded by the Tribunal under the aforesaid heads is apparently unjust and inadequate. Having regard to the guidelines laid down by the Hon'ble Apex Court in series of Judgments, I deem it appropriate to award the consolidated compensation of Rs.1,25,000/- jointly under both the said heads. The appellant is thus found entitled for the total compensation of Rs.10,80,000/-. In the facts and circumstances of the case, it appears to me that, this would be just and fair

compensation payable to the appellant. Hence the following order.

ORDER

1. The appellant is held entitled to the total compensation of Rs.10,80,000/- (Rs.Ten Lakhs Eighty Thousand Only) inclusive of NFL compensation with interest thereon at the rate of 9% per annum from the date of filing of the petition till its realization jointly and severally from respondent nos.1 & 2.
2. The impugned Award be modified accordingly.
3. Deficit court fee, if any, be recovered from the appellant before preparation of the modified Award.
4. The appeal stands partly allowed in the aforesaid terms.
5. Pending civil application, if any, stands disposed of.

(P.R. BORA, J.)