

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

FIRST APPEAL NO. 3025 OF 2015

SHIVNATH @ SHIVAJI RADAKISAN JONDHALE
VERSUS
RAJSHEKAR PRABHAPPA KHANAPURE AND ANOTHER

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Advocate for Appellant : Mr R L Kute
Advocate for Respondent 1 : Mr S G Rudrawar
Mr S G Chapalgaonkar Advocate For Resp 2

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CORAM : V.K. JADHAV, J.
Dated: February 23, 2017

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PER COURT :-

1. Heard finally with the consent of parties at admission stage.
2. Being aggrieved by the judgment and order dated 16.7.2015 passed by the Member, Motor Accident Claims Tribunal, Sangamner, in MACP No.207/2010, the claimant has preferred this appeal to the extent of quantum.
3. The learned counsel for the appellant submits that, though the claimant has sustained 50% disablement as per disablement certificate Exh.44 which is in Form Comp. 'B' issued by the Medical Officer

of the Government Hospital Nashik, the learned Member of the Tribunal has not awarded any compensation under the head of permanent disablement. As per the certificate of permanent disablement exh.44, the claimant suffered from post traumatic shortening of right leg by 2 inches, severe knee stiffness ®, wasting of (R) thigh and ® leg, unable to do squatting and cross legging. The Tribunal has awarded a very meager amount under the heads of pains and sufferings. Though, the appellant is facing problems of squatting and cross legging severe knee stiffness, shortening of right leg, and he undergone five operations, the Tribunal has awarded meager amount of Rs.10,000/- under pains and sufferings. The learned counsel submits that the Tribunal has awarded a very meager amount for special diet, attendant charges, transportation, loss of amenities in future life. The Tribunal has not awarded any compensation for future medical expenses. Learned counsel submits that, though the appellant claimant has produced before the Tribunal medical expenses incurred by the claimants to the tune of Rs.3,66,000/-, the Tribunal has only awarded Rs.2.00 lacs. Learned

counsel submits that on account of injuries sustained in the accident and resultant disablement, the claimant remained absent on his duties for near about 13 months, however, the Tribunal has considered and awarded nine months salary as actual loss of income and further deducted 20% of the amount from the said income towards income tax. Learned counsel submits that the appellant claimant has examined the representative of the sugar factory to substantiate his contention that for 13 months he was not paid salary. Learned counsel submits that, the Tribunal has also not considered the loss in the agricultural income. The appellant claimant has deposed that he was personally cultivating his land prior to the accident however, on account of disablement sustained by him, he is not in a position to cultivate the land as effectively as he was doing prior to the accident.

4. Learned counsel for respondent-insurer submits that, the appellant claimant has not examined the doctor to prove the contents of permanent disablement certificate Exh.44. So far as medical expenses incurred

by the appellant claimant is concerned, the appellant claimant has not examined any witness to prove the hospital bills. So far as cash memos for the purchase of medicine are concerned, compensation for the same can be awarded, however, in absence of any proof, the compensation for the hospital bills cannot be awarded. Learned counsel submits that even then the Tribunal has awarded lumpsum compensation of Rs.2.00 lacs considering the documents placed on record.

5. Learned counsel submits that agricultural land admeasuring only 23R is jointly owned and possessed by the appellant claimant and he has further admitted in his cross examination that the cultivation of fruit growing trees (pomegranate trees) in his land requires the labour of skilled persons and even after the accident he is getting work done through skilled labour. In view of the same, the Tribunal has rightly observed that there is no loss in the agricultural income as such. Learned counsel submits that the Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal and the appeal

is thus liable to be dismissed.

6. On careful perusal of the oral and documentary evidence, it appears that, the permanent disablement certificate exh.44 is issued by the Medical Officer Government Hospital and the same is exhibited by the Tribunal on that count. It further appears that, the respondent insurer has not raised any objection for exhibiting the said document. On careful perusal of the permanent disablement certificate exh.44 which is in form comp B, it appears that, the claimant is suffering from from post traumatic shortening of right leg by 2 inches, severe knee stiffness ®, wasting of (R) thigh and ® leg, unable to do squatting and cross legging. Under these circumstances, the Tribunal ought to have awarded the compensation for permanent disablement though there is no loss of future income as such. Learned counsel for the respondent insurer has vehemently submitted that, said disablement certificate was issued on 2.2.2011 and thereafter the appellant claimant had taken treatment. Thus, there might have some improvement. However, the same is not brought by

way of any certificate before the Tribunal. So far as shortening of right leg by 2 inch is concerned, there cannot be any improvement even after taking the treatment at later stage. The appellant claimant is suffering from severe knee stiffness ® and as wasting of ® thigh and ® leg. In view of the above discussion, the appellant claimant is entitled for Rs.1,50,000/- for permanent disablement.

7. It is a part of record that, the claimant has taken treatment in various hospitals and all 5 discharge summaries are placed on record same are marked at exh.42,43 and three discharge card alongwith list exh.31 exh.57, 59, 60. He had undergone operations for five times. However, the Tribunal has awarded meager amount of Rs.10,000/- for pains and sufferings and has not awarded anything for loss of amenities in future life. Thus, the claimant is entitled for Rs.50,000/- for pains and sufferings and Rs.50,000/- for loss of amenities in future. Furthermore, the claimant is also entitled for reasonable amount towards transportation, attendant charges and special diet. The claimant is entitled for

Rs.15,000/- each on these three counts corresponds to Rs.45,000/-.

8. So far as claim for medical expenses are concerned, though hospital bills are placed on record, the appellant claimant has failed to prove the same by examining concerned person from the said hospital. Learned counsel for the appellant claimant has pointed out that in all the claimant has incurred medical expenses to the tune of Rs.3,66,000/-. There are cash memos pertaining to medicine purchase which are placed on record. Considering the same, even though the appellant claimant has failed to prove the hospital bills, the Tribunal has awarded lumpsum amount of Rs.2.00 lacs. In the circumstances, I add Rs.50,000/- more in the said amount to cover the medical expenses.

9. So far as the loss of actual income is concerned, the appellant claimant has examined representative of employer, who has deposed before the Tribunal that for near about 13 months, salary was not paid to appellant claimant on account of his absence. The Tribunal has

considered only 9 months salary and awarded the compensation under the head of actual loss of income. The appellant is entitled for loss of income of aforesaid 13 months period. I do not find any justifiable reason to deduct 20% income from the same towards income tax. Said deduction is accordingly set aside. The claimant is entitled for the entire amount of said 13 months period.

10. So far as income from the agricultural land is concerned, the appellant claimant has admitted in his cross examination, that even prior to the accident, he was cultivating his land through skilled labours and after the accident, he is also doing the same. The learned Member of the Tribunal has therefore rightly concluded that there is no loss in the agricultural income as such.

11. In view of the above discussion, break up of compensation under various heads which can be broadly categorized is as under :-

1	Permanent disablement	Rs.1,50,000/-
2	Pains and sufferings (as against Rs.10,000/- awarded	Rs.0,50,000/-

	by the Tribunal)	
3	Loss of amenities in future life	Rs.0,50,000/-
4	Special Diet, transportation and attendant charges (As against Rs.10,000/- awarded by the Tribunal for special diet and attendant charges)	Rs.0,45,000/-
5	Medical expenses (As against Rs.2,00,000/- awarded by the Tribunal)	Rs.2,50,000
6	Loss of actual income (as against Rs.72,000/- awarded by the Tribunal)	Rs.1,29,545/-
	TOTAL	Rs.6,74,545/-

(Rs. Six lacs seventy four thousand five hundred and forty five only)

12. The claimant is entitled to total compensation as worked out herein-above. Thus, the judgment and award passed by the Tribunal requires modification to that effect. Hence, following order.

O R D E R

1. Appeal is hereby partly allowed with proportionate costs.
2. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Sangamner dated 16.7.2015 in MACP No.207/2010 is hereby modified in following manner :-

- a] The petitioner is entitled to get an amount of Rs.6,74,545/- (Rs. Six lacs seventy four thousand five hundred and forty five only) inclusive of NFL amount of Rs.25,000/- from respondents no.1 and 2 jointly and severally together with interest @ 8% p.a. from the date of filing of the petition till realization of the entire amount.
3. Rest of the judgment and award stands confirmed.
4. Award be drawn up as per the above modifications.
5. Needless to say that, if any amount is paid as per the judgment and award passed by the Tribunal, the same shall be adjusted in the award after modification.
6. First appeal accordingly disposed of. Pending civil application, if any, also stands disposed of.
7. The claimant shall pay the deficit court fees within four weeks from today.

(V.K. JADHAV, J.)

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aaa/-