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

FIRST APPEAL NO. 2631 OF 2017

Sunil @ Bapu Damodar Jagtap
Age : 49 years, Occu: Barber,
R/o. Plot No.21, Nehru Nagar,
Shirsoli Road, Jalgaon. ...Appellant
(Orig. Claimant)

Versus

1) Kadu Gangaram Koli
Age: 40 yrs, Occu: Driver,
R/o. Padalse, Taluka Yawal,
District Jalgaon

2) Vijay Ratan Bhoi
Age: Major, Occu : Vehicle Owner,
R/o. Padalse, Taluka Yawal,
District Jalgaon

3) The Oriental Insurance Company
Limited, Through its Divisional
Manager, 3rd Floor, Central Phule
Market, Jalgaon. ...Respondents
(Orig. Resp.No.1 to 3)

Shri. Satyajit S. Bora, Advocate for appellant
Shri. A.S. Deshpande, Advocate for Respondent No. 3

CORAM : A.M. DHAVALE, J.

RESERVED ON : 3rd AUGUST, 2018

PRONOUNCED ON : 16th AUGUST, 2018

JUDGMENT :

1. This is claimant's Appeal for enhancement. The

claimant Sunil Jagtap aged 49 years, a barber had filed petition before M.A.C.P. No. 203/2011, Jalgaon for compensation of Rs.3,00,000/- on account of permanent disability sustained due to injury to his leg. The learned Member of the trial court awarded Rs. 2,38,100/- with interest @ 8 % per annum.

2. Being aggrieved, claimant has filed this Appeal for additional sum of Rs. 3,00,000/-.

3. Shri. S.S. Bora, learned advocate for the appellant argued that the finding of the learned trial court that the driver of the truck which gave dash to the Scorpio in which the claimant was travelling was alone rash and negligent has been accepted by the Member, MACT and has not been challenged. Similarly, there is finding of 15 % disability which is also not assailed by the respondents. The claimant is claiming enhancement on the ground that there was 100 % functional disability. The claimant was having income of Rs. 9,000/- per month, but the trial court has assumed it at Rs.6,000/- per month. The claimant has produced income tax returns in support of his claim of income. Functional disability should have been held at 100 %. Besides, there

should have been appropriate and reasonable compensation on account of permanent disability and loss of amenities and enjoyment of life and pains and sufferings. Besides, there should have been 50 % increase on account of future prospects. Shri. Bora submitted that even if 15 % disability is assumed, still, income of the claimant was Rs. 9,000/- p.m. i.e. Rs. 1,08,000/- per annum and the 15 % disability would be Rs. 16,200/-.The multiplying factor would be 13 and the loss on account of permanent disability should have been Rs. 2,10,000/-. Besides, there should have been Rs. 2,10,000/-. Besides, there should have been separate compensation under other heads.

4. Learned Adv. Shri. Bora, has filed the certified copies of income tax returns in the trial court. Xerox copies of income tax returns acknowledged by Income Tax Department were filed. He also argued that there should be compensation for future medical expenses.

5. Per contra, learned advocate Shri. A. S. Deshpande opposed the application. He argued that income tax returns disclosed that there was no loss of income i.e. income has

grown even after the accident. There was no functional disability as claimed. The trial court has considered all the aspects and has given reasonable compensation. No enhancement is awarded. Hence, Appeals should be dismissed.

6. The points for my consideration with findings are as follows :-

(i)	Whether the claimant has sustained functional disability ? If yes, to what extent ?	Yes, 20 %
(ii)	Whether the learned trial Judge has awarded just and reasonable compensation ?	No, it is enhanced to Rs.4,01,000/- with interest @ 8 % and proportionate costs.
(iii)	What order ?	As per final order

REASONS

7. As per the claim petition and the evidence of the claimant, on 28.11.2009 at 11.20 p.m. he was proceeding in Scorpio and truck No. MH-19/Z-2253 owned by respondent No.2, insured with respondent No.3 was driven rashly and negligently by respondent No.1 from the opposite side and

it gave forceful dash to the Scorpio resulting into fracture of right thigh bone (femur bone) of the claimant. It was operated and rod inplantat was required. A crime was registered against the truck driver at Yawal Police Station at Crime No. 122 of 2009 under section 338 and other I.P. C. and other offences under Motor Vehicle Act. The claimant was referred to the Rural Hospital where after the preliminary treatment, he was admitted in Malti Hospital as indoor patient at Jalgaon from 29.11.2009 to 17.12.2009. He was twice operated and then he was referred to Dr. Sancheti Hospital, Pune for further treatment. He incurred expenses of Rs.3,00,000/-. Due to disability, he was unable to carry on his work of saloon.

8. The claimant has relied on copy of FIR, Exh.32, spot panchanama Exh. 34, statement of himself Exh. 35 and 36, medical certificate of Yawal Rural Hospital, Yawal, Exh. 37. There are copies of RC book, tax book, goods carriage permit, insurance policy of the truck, and driving licence of respondent No.1. The spot of accident shows that the truck was not on its extreme left. It was far away from the left and there is head on collusion. In spite of applying urgent

brakes causing brake mark on road up to 10 feet, the truck could not be controlled and it gave dash. The front portion of the Scorpio went inside the truck and there was heavy accident. The charge sheet has been filed against the driver of the truck. Respondent No.1 was not examined on behalf of the respondents. Considering the facts, the learned trial Judge rightly held that accident took place due to entire rashness and negligence of the truck driver. The said findings has not been assailed by the respondent.

9. As far as disability is concerned, the evidence of the claimant and CW2 Dr. Sachin Ahire, Orthopedic Surgeon from General Hospital, Jalgaon disclose that there was injury only to the right thigh causing fracture and the same was operated and rod was inserted. There is no report about shortening of leg or mal-union of bones. The disability certificate Exh. 43 shows the Tilted Segmental # femur c implant in situ – Delayed union O/E muscular. There is evidence of swelling on distal 3rd @ femur i.e. thigh. There was restricted movement of @ hip & knee, walk with support. He is also unable to sit cross legged and squat. Physical disability is certified to be 25 %. The claimant has

produced medical bills of Rs. 38,594/- and bill of Malti Hospital of Rs. 20,000/- total Rs. 58,594/-. The trial court has not awarded the full medical expenses which should have been awarded. There is no bill showing purchase of wheel chair or walker or any apparatus for support.

10. There is no evidence that physiotherapy treatment was advised and was taken. In absence of such evidence the certificate showing permanent disability of the restricted movement cannot be accepted.

11. The income tax returns for the 3 assessment years are filed on record. Those disclose no reduction in the income. The income figures for the 3 years are as follows :-

Assessment year Financial year	Gross Income Taxable Income	Income Tax	Net income	
2009-2010 2008-2009	1,62,567 162,567	836	1,61,731	Before the accident.
2010-2011 2009-2010	1,82,613 1,64,610	475	1,64,135	In the year of accident
2010-2011 2011-2012	2,20,000/- 1,64,331/-	450	1,63, 975	In the year next to the accident

12. The above chart shows that there was increase in the income of the claimant every year. In the year before the

accident, his income was Rs. 1,62,567/-. In the financial year 2009-2010, his income was increased to Rs. 1,82,613/-, but due to investment in postal recurring deposit post office, his taxable income was reduced to Rs. 1,61,612/-. In the year next to the year of accident, the income of the claimant was Rs. 2,20,000/-, but he showed depreciation of Rs. 28,776/- and made investment in post office R.D. for Rs. 24,000/- to reduce his income to nominal level of Rs. 1,64,320/-. These figures indicate that the income of the claimant has not at all decreased, but increased every year. In the light of these facts, it is not possible to accept the evidence of the claimant and his doctor that the claimant was having functional disability and was unable to continue his work of barber.

13. The evidence shows that claimant was running a barber saloon with the help of two workers. There is no evidence to show that due to the injury to him, he was required to engage another worker. I find that there is evidence uncontroverted of some physical disability due to restricted movements which is assessed at 25 % by CW2 Dr. Ahire. It is stated that the claimant was having difficulty in

squatting and sitting cross legged. Considering the evidence on record, I hold that the claimant must be continuing to do his work as barber without appointment of additional worker. But due to physical disability, there may be reduction in his working capacity to the extent of 20 %.

14. The evidence on record shows that the claimant was having earning Rs. 1,65,000/- i.e. around Rs. 14,000/- per month. It is with the help of three workers. This is net income after paying the wages of the skilled workers. Thus, each worker must be earning of Rs.4,500/- per month for his owner. Considering the earning from each worker, I assume that the claimant must be paying Rs.4,000/- per month to each of his employees. Besides, the claimant was also doing supervisory work. I, therefore, hold that the income from the saloon has not been stopped. The income by doing barber work and supervisory work is also not stopped. He can do his work but may be required to take rest periodically. Hence there may be functional disability of around 20 %. I assume the income of the claimant at Rs. 6,000/- per month with respect to his own skill of cutting hair and doing supervision of the shop with loss of 20 %.

The loss of income would be Rs. 1200 p.m. i.e. Rs, 14,400/- per annum. The claimant was aged 49 years and multiplier would be 13 and loss of income would be Rs. 1,87,200/-.

15. Since the claimant was self-employed, I grant future prospect of 25 % to hold loss of income of Rs. 2,34,000/-.

16. In addition, the claimant is entitled for medical expenses of Rs. 58,600/-. I further award following amounts :-

1.	Loss of earning	Rs. 2,34,000/-
2.	Medical expenses	Rs. 58,600/-
3.	Pains and sufferings	Rs. 25,000/-
4.	Loss of amenities and enjoyment of life	Rs. 25,000/-
5.	Loss of income during the hospitalization.	Rs. 18,000/-
6.	Transport, attendance charges diet, etc.	Rs. 20,000/-
7.	Future expenses for removing rod / implants	Rs. 20,000/-
	Total :	Rs. 4,00,600/-

Rounded up Rs. 4,01,000/-

17. The learned trial Judge has rightly held the income of the claimant of Rs. 6,000/- per month but for different reasons. He has not granted enhancement on account of future prospects. He has granted less medical expenses than the bills produced. He considered loss of income only for hospitalization period, but when there was fracture, the claimant could not have attended his work for at least 3 months. The compensation awarded of Rs.2,38,700/- by the learned trial Judge is on lower side and it needs of raising to Rs. 4,00,600/-for the reasons stated, I maintain interest @ 8 % per annum.

18. Hence, the appeal is partly allowed. The Judgment and award of the learned trial court is modified and the compensation awarded is increased to Rs. 4,01,000/-.

19. Respondent Nos. 1 to 3 do jointly and severally pay Rs. 4,01,000/- (inclusive of NFL amount) with interest @ 8 % per annum and proportionate costs. For the purpose of costs, the advocate fees in this court is quantified at Rs. 15,000/-. The NFL amount and other amounts paid or

deposited will be reduced from the above liability and the interest shall be accordingly adjusted. The balance amount shall be paid by the insurance company by cheque to the claimant. Award amounting decree shall be drawn up accordingly.

(**A.M.DHAVALE, J**)

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