

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

919 FIRST APPEAL NO. 2382 OF 2017

Laxman S/o Rambhau Gavhane,
Age: 45 year, Occ. Labourer,
R/o Bhendekh, Tq. Newasa,
Dist. Ahmednagar.

...Appellant

Versus

1. Arvind S/o Baburao Baviskar,
Age: 35 years Occu: Business,
R/o Purnawad Nagar, Ward No.2,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.
2. The Chief Executive Officer,
The New India Insurance Company Ltd.
Branch Manager, Ambar Plaza, Station
Road, Ahmednagar.

...Respondents

Advocate for Appellant : Mr. Pratap Vikhe Patil, holding for
Mr. R.R. Karpe
Advocate for Respondent No. 2 : Mr. S.R. Bodade

CORAM : A.M. DHAVALÉ, J.

DATE: 7th AUGUST, 2018

ORAL JUDGMENT :-

1. Heard. Admit. With the consent of learned Advocates appearing for the parties, the appeal is taken up for final hearing.

2. This is an Appeal for enhancement of compensation in MACP No. 147 of 2008. The appellant was awarded compensation of Rs.2,89,600/- inclusive of the NFL amount with interest @ 6 % per annum on account of compound fracture to right tibia fibula.

3. Dissatisfied by the amount, the claimant has preferred this Appeal.

4. Heard the learned advocates. The record of the trial court shows that on 14.11.2006 at 11.00 p.m. the claimant along with others was proceeding in Maruti Van while returning from Nashik. When he came near Shinde vasti, one Jeep belonging to respondent No.1 driven rashly and negligently gave dash to the bike and then to the Van resulting into the injuries to the claimant. The Jeep was insured with respondent No.2 and the driver of the Jeep was prosecuted by registering crime at Cr. No.121/2006 at Shrirampur Taluka Police Station. The claimant was brought and treated to the Kamal Nayan Bajaj Hospital, Aurangabad. The claimant claims that due to accident, he had sustained severe injuries to his both legs and his both legs became invalid. He was referred to better hospital for further

treatment. Still, he has sustained 100 % permanent disability. The claimant claims that he was doing labour work and was earning Rs. 5,000/- per month. He has spent Rs.1,00,000/- for medical expenses and for incidental charges during the hospitalization period. Hence, he initially claimed Rs.3,00,000/- as compensation, and it was enhanced to Rs. 10,00,000/-.

5. The respondent Nos. 1 and 2 filed their separate written statements and denied the allegations made in the petition. The grounds relating to the quantum of compensation were also denied. Respondent No.1 claimed that he was holding valid driving licence. Respondent No.2 also opposed and denied the claim. He claimed that the Van was driven rashly and negligently in a zigzag manner and driver of the Van lost control and gave dash to the Jeep. As driver of the Van was responsible for the accident, he is not entitled to claim any compensation against the respondent No.2.

6. The claimant has examined himself and Dr. Golhar from Kamal Nayan Bajaj Hospital, Aurangabad.

7. The learned trial Judge after considering the evidence held that there was rashness and negligence of Jeep driver and 60 % permanent disability was sustained by the claimant. He awarded Rs. 2,37,600/- towards the compensation for loss of income and following amounts under other heads.

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| 1. Loss of income for a period of four months | Rs. 12,000/- |
| 2. Medical expenses | Rs. 20,000/- |
| 3. Pains and suffering | Rs. 20,000/- |

8. Learned Advocate Shri. Pratap Vikhe Patil submitted that as per the disability certificate Exh.32, and as per the evidence of Dr. Golhar, the claimant had sustained compound fracture to right tibia fibula. He is not able to carry out any functions and thereby, he has sustained 100 % disability. The learned Member of the Tribunal erred in holding that the disability was only 60 %. He also argued that the income of the claimant was wrongly assumed low at Rs. 3,000/- when it should have been assumed at Rs.4,000/- per month. Learned advocate Shri. S.R. Bodade supported the Judgment of the trial court and contended

that the disability certificate was not duly proved. There was no 100 % disability. The Lower Court has awarded compensation on higher side and needs no interference.

9. The points for my consideration and my findings thereon are as under :-

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| 1. | Whether the claimant has received just and reasonable compensation or not ? | In the affirmative. |
| 2. | What order ? | The appeal is partly allowed. Interest rate increased to 9 % p.a. |

REASONS

10. The claimant has filed affidavit as per his pleadings and has claimed that he was seriously injured and had fractures of legs. The Jeep driver was negligent and he has sustained 100 % permanent disability. He was earning Rs.5,000/- per month and now he has no source of income. It was suggested that certificate of 100 % disability was wrongly obtained, which is obviously denied. It is also denied that he was not having source of income after sustaining disability.

11. CW2 Dr. Golhar has deposed that he was M.S. Orthopedic and was serving in Civil Hospital, Ahmednagar. On 14.12.2006, he has attended the claimant in the Orthopedic Ward of Civil Hospital. He had examined the claimant and had noted that there was compound segmental fracture right tibia fibula. The claimant was operated and was discharged. On 28.12.2007, he again came to the hospital for disability certificate, examined him and found that there was non-union with infection with short leg. At that time, his disability was 100 %. He approved disability certificate Exh.32.

12. On considering the evidence in the light of the arguments advanced by the advocates, I find that the claimant has obtained the disability certificate after the date of one year. It is given by Medical Officer, Orthopedics Surgeon from District Hospital, Ahmednagar. It gives the reason there is no union, and there was shortage of right leg. Injury certificate shows compound segmental fracture right fibula of shortage of right leg. It is shown as 100 % disability. It is obvious that certificate is exaggerated version about percentage of disability. The person is

standing with crutches in the photograph annexed to the certificate. His one leg is totally normal and other leg is having fracture. The admission of the doctor that injury sustained by claimant was not of a permanent nature shows that the permanent disability certificate issued by CW2 is not reliable and trustworthy.

13. Considering facts, I find that though the claimant could have claimed higher compensation on the ground of pains and suffering and other expenses, he was not entitled for compensation on the ground of 60 % permanent disability. The learned trial Judge has awarded compensation of Rs. 2,89,600/-. If there was no permanent disability as admitted by Dr. Golhar, the compensation is not only just and reasonable, but somewhat on higher side. The insurance company has not filed appeal. Considering the facts, I hold that compensation awarded is just and sufficient. However, the rate of interest 6 % per annum is on lower side, I partly allow the Appeal raising rate of interest from 6 % to 9 %. Hence, the order :-

O R D E R

(A) The Appeal is partly allowed.

- (B) The claim for enhancement in the compensation is rejected. However, interest @ 6 % per annum is raised to 9 % per annum.
- (C) There shall be no order as to costs.

(A.M.DHAVAL, J)

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