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

FIRST APPEAL NO.44 OF 2017

Babasaheb s/o Krushnarao Jadhav
Age 42 years, Occu. Tailoring, Agriculture,
R/o C/o B.K. Tailor, Near New Court,
Ward No.1, Taluka Shrirampur,
District Ahmednagar ... APPELLANT

VERSUS

1. Badrinath s/o Sakharam Kharde,
Age major, Occu. Agriculture,
r/o Chandegaon, Taluka Rahuri,
District Ahmednagar.
2. The Branch Manager,
The New India Assurance Company Ltd.,
Parag Plaza, Shivaji Cross road,
Taluka Shrirampur,
District Ahmednagar ... RESPONDENTS

.....
Mr. Shaikh M.A. Jahagirdar, Advocate for appellant
Shri K.N. Shermale, Advocate for respondent No.1
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 2nd August, 2018.

ORAL JUDGMENT :

1. In Motor Accident Claim Petition No.39/2005, the
Member, Motor Accident Claims Tribunal, Shrirampur, by
judgment dated 4.12.2013, awarded compensation of
Rs.96,000/- to the claimant. The aggrieved claimant has filed

this appeal for enhancement. On 19.12.2004, the claimant was proceeding on a bike No.MH-17/P-8172 of his friend as a pillion rider along Rahuri Shrirampur Road. When they came near Vambori at 5.30 p.m., another bike No.MH-17/J-6174, driven rashly and negligently, gave them a dash. As a result of the injuries sustained to the ankle, the claimant suffered permanent disability. Crime was registered at C.R. No.25/2005 at Shrirampur Police Station against the driver of another bike. The claimant sustained fracture to right mandial malleolus (ankle), knee, chest and other bodily injuries. The claimant claimed that he was aged 40 years and was working as a Tailor and was earning Rs.10,000/- per month. He had to incur medical expenses of Rs.40,000/-.

2. The owner of offending vehicle, though served, did not appear. The Insurance Company denied various particulars claimed by the appellant for want of knowledge. The issues were framed at Exh.26. The learned Member held that the rashness and negligence was proved, but instead of applying the multiplier method, he awarded Rs.40,000/- for permanent disability of 20%, Rs.40,000/- for future losses, Rs.36,000/- for medical and hospital bills and additional Rs.20,000/- for diet, pains and sufferings and miscellaneous expenses, total Rs.96,000/- (the total is Rs.1,36,000/-).

3. Mr. Jahagirdar, learned Advocate for the appellant argued that, there is only issue about quantum. The deceased was working as a Tailor. He has produced copy of Shop and Establishment Licence. He was aged 40 years and his evidence has not been controverted by the respondents by examining any witness. He has examined C.W.2 Dr. Bhagwat. Besides the physical disability of 20%, the functional disability of the appellant is quite large. The learned Member has not followed the well settled principles of assessment of compensation in accident claims. The multiplying factor method has not been adopted and the compensation awarded is very low.

4. Per contra, learned Advocate Shri Chapalgaonkar for the Insurance Company argued that, there is no documentary evidence worth reliance to accept the appellant's contention that he was doing tailoring work and was earning Rs.10,000/- per month. Besides, the doctor has given admission that the appellant can continue his work of his tailoring without any difficulty. He argued that, in absence of documentary evidence, the income of the deceased should be taken at Rs.3000/- p.m. The functional disability should be taken equal to the physical disability. Reimbursement of medical bills is already granted and compensation under conventional heads are also properly granted.

5. The point for my consideration with my findings are as follows :

- (I) Whether the learned Member has granted just and reasonable compensation to the claimant ? ... **In the negative**
- (II) If not, what order ? ... **Compensation enhanced to Rs.2,37,500/-**

6. The evidence on record shows that, the accident took place on 19.12.2004. The claimant claims that, at that time he was aged 40 years, but he has not produced any documentary evidence about his age. The evidence regarding the manner in which the accident took place and the negligence of the driver of the another bike is not challenged. The learned Member has held the Driver of another bike as fully negligent. The claimant has examined C.W. Dr. Bhagwant, who is running hospital in his own name Dr. Murade Hospital at Shrirampur. As per his evidence, the claimant has sustained ankle fracture. He has issued disability certificate dated 17.9.2004 Exh.40. He has shown that, due to painful restriction of ankle movements and swelling, there was 20% physical disability. He has proved his bill of Rs.20,180/- (Exh.41). He stated that, due to injury, the claimant would not be in a position to do any work in standing position. In

cross-examination, he admitted that, the claimant was admitted in hospital only for 10 days and after the treatment his injury was cured. He admitted that, patient would be in a position to do the work of tailoring without any difficulty. He denied the permanent disability will be of only 5%. The claimant has produced xerox copy of his tailoring shop licence at Page 65 of the record, but learned Advocate Mr. Chapalgaonkar has rightly argued that the same has not been marked as Exhibit. Besides, it is related to the subsequent period 2008 to 2010. It does not show that at the time of accident the claimant was doing tailoring work. The 7/12 extract shows land of 60 R in the name of appellant and he was growing Soyabean in the said land in the year 2013-2014.

7. I find that, there is no reliable material to hold that the claimant was working as a Tailor and was earning Rs.10,000/- per month. The notional income will have to be assumed as that of daily labourer at Rs.4500/- per month. Though there was permanent disability of only 20%, what is material is the functional disability. In absence of specific evidence about physical disability sustained, I assume that the functional disability would be same as physical disability of 20%. Loss of income will be Rs.900/- per month i.e. Rs.10800/- p.a. In absence of documentary evidence about the age, I assume the

age of the appellant on the wrong side of 40 i.e. between 41 to 45, I select the multiplier of 14. Thus, the claimant will be entitled for compensation of Rs.1,51,200/- towards loss of income. Besides, the claimant has incurred medical expenses of Rs.36,000/-. I award following amounts, in addition, under other heads :

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|-----|---|-------------|
| (1) | Medical Expenses | Rs.36,000/- |
| (2) | Pains and sufferings | Rs.10,000/- |
| (3) | Loss of amenities and loss of enjoyment
on account of the injuries on account of
permanent disability | Rs.25,000/- |
| (4) | Other incidental expenses like diet,
physiotherapy, attendant charges etc. | Rs.15,000/- |

8. Thus, I hold that the claimant is entitled for compensation of Rs.2,37,200/- (Rupees Two Lakhs thirty seven thousand two hundred only). I award interest on the said amount @ 9% p.a. The learned trial Judge has taken conservative approach and has not followed the settled principles of law for grant of compensation in case of permanent disability. The amount of Rs.96,000/- awarded by the trial Judge is meager. Hence, the judgment of the learned trial Judge needs modification. Hence the following order : -

ORDER

- (i) The appeal is partly allowed.
- (ii) The judgment and decree of the learned trial Judge in Motor Accident Claim Petition No.39/2005, dated 4.12.2013 is hereby set aside and modified. It is directed that the respondents No.1 and 2 shall jointly and severally pay to the claimant Rs.2,37,200/- (Rupees Two Lakhs thirty seven thousand two hundred only) inclusive of No Fault Liability amount along with interest @ 9% p.a. from the date of institution of the petition till the realisation. Out of the amount payable to the claimant, a sum of Rs.1,50,000/- (Rupees One Lakh fifty thousand only) shall be invested in Fixed Deposit in any Nationalised Bank for a period of one year, payable to him on completion of one year without seeking directions of this Court.
- (iii) The appellant shall deposit Court Fees as per rules and on payment of such court fees, the decree shall be drawn up.

(A.M. DHAVAL)
JUDGE