

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

FIRST APPEAL NO.352 OF 2012

Shri Pradeep Vasantrya Farate
Age: 26 years, Occu : Service,
R/o. Jahangirpura, At & Post – Erandol,
Tal. Erandol, Dist. Jalgaon

.. Appellant
(Orig. Claimant)

VERSUS

1. Shri Jairam Jagannath Patil
Age : Major, Occu : Business,
At and Post – Wak, Tal. Bhadgaon,
Dist. Jalgaon

2. The New India Insurance Company Ltd.,
Through Divisional Manager,
Near Dadhiwala Bunglow, Jilla Peth,
Jalgaon

.. Respondents
(Orig. Respondents)

...

Advocate for Appellant : Shri M.M. Bhokarika

Respondent No.1 – Served.

Advocate for Respondent No.2 : Shri S.G. Chapalgaonkar

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CORAM : PR. BORA, J.

Dated: OCTOBER 24, 2018

ORAL JUDGMENT :

1. The claimant in Motor Accident Claim Petition No.597 of 2000 decided by the Motor Accident Claims Tribunal at Jalgaon (hereinafter referred to as the 'Tribunal') on 11.03.2010 has preferred the present appeal seeking

enhancement in the amount of compensation awarded by the said Tribunal.

2. Heard Shri Bhokarikar the learned Counsel appearing for the claimant and Shri Chapalgaonkar the learned Counsel appearing for respondent – Insurance Company.

3. Appellant was injured in a vehicular accident happened on 03.05.2000. It is the contention of the appellant that, because of the injuries caused to him in the alleged accident though he is stated to have suffered 50% permanent disablement, he lost his entire earning capacity and as such, the compensation must have been awarded on the said criteria. The learned Counsel for the appellant submitted that, at the time of the accident the age of the appellant was 25 years and he was earning the salary to the tune of Rs.4000/- per month i.e. Rs.48,000/- per annum. Learned Counsel submitted that, sufficient evidence has been brought on record evidencing that, after being injured in the alleged accident, the appellant was rendered incapable of performing the work, which he was

performing prior to the accident. The learned Counsel submitted that, in the circumstances, the learned Tribunal must have awarded the compensation holding that, the appellant has lost his entire earning capacity. Learned Counsel further submitted that, the Tribunal has also erred in applying the multiplier of 17, when multiplier of 18 must have been applied.

4. Learned Counsel Shri Chapalgaonkar opposed the submissions made by the learned Counsel for the appellant. The learned Counsel submitted that, it was nowhere the case of the appellant that, he was removed from the service so as to hold that, he has lost his entire earning capacity. The learned Counsel submitted that, even otherwise considering the nature of injuries it is difficult to accept the request of the appellant and to hold accordingly that, the appellant lost his entire earning capacity. The learned counsel submitted that, Tribunal has awarded just and fair compensation and a well reasoned order has been passed. The learned Counsel, therefore, submitted for dismissal of the appeal.

5. Nextly, it was contended by the learned Counsel for the appellant that, though the appellant has placed on record the hospital and medical bills to the tune of Rs.1,25,000/- and though the said bills are duly proved by the appellant, the Tribunal has not awarded a single pais towards the said medical expenses. The learned Counsel invited my attention to the discussion made by the Tribunal in paragraph no.13 of the Judgment. The learned Counsel submitted that, the appellant is also entitled to receive the expenses incurred by him on his treatment.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned Judgment and evidence on record.

7. Insofar as the salary amount of the appellant is concerned, though learned Counsel submitted that, the Tribunal must have held the salary of the appellant to the tune of Rs.4400/-, I see no reason to cause any interference in the amount of salary as has been considered by the Tribunal while

calculating the amount of compensation. There, however, appears substance in the contention raised by the learned Counsel that, when it was sufficiently brought on record that the right leg of the appellant was amputated below knee, the learned Tribunal must have held the permanent disability to the extent of 70%, having regard to the provisions under the Employees' Compensation Act. There is further substance in the contention of the learned Counsel that, the appropriate multiplier in the present case could have been 18 and not 17. Thus, to the aforesaid extent, the amount of compensation needs to be enhanced.

8. The Tribunal has held the salary income of the appellant to the tune of Rs.48,000/- per annum and has applied the multiplier of 17 and has thereafter held the appellant entitled for half of the said amount by holding the permanent disablement caused to him to the extent of 50%. The Tribunal has accordingly determined the amount of Rs.4,08,000/- ($48,000 \times 17 = 8,16,000/-$ - 50% = 4,08,000). As has been discussed by me in the above paragraph, the appellant has to be

held to have incurred permanent disablement to the extent of 70% having regard to the fact that, his right leg has been amputated below knee. The permanent disablement as aforesaid is in consonance with the provisions and schedules provided under the Employees' Compensation Act. Secondly, as noted above, the multiplier of 18 would apply in the present case and not of 17 as has been applied by the Tribunal.

9. In the circumstances, the amount of compensation payable to the appellant is calculated as under :

. Annual salary - Rs.48,000/-. The same is multiplied by 18, which comes to Rs.8,64,000/-. 70% of which comes to Rs.6,04,800/-. I hold the appellant entitled for the aforesaid amount of compensation towards the loss of future income.

10. On perusal of the record of the case, it is noticed that, the appellant had filed on record the hospital and medical bills at Exhs.41 to 134. The appellant has also placed on record the certificates issued by the concerned Medical Officers at Exhs.136 & 137. The appellant had also placed on record of the

trial Court the bills at Exhs.140 & 140-A evidencing the payment made by him to Dr. Kabra hospital and vide bill no.142 to the Sanjivan Heart Hospital. The Tribunal has erred in not awarding any amount towards the medical expenses incurred by the appellant on his treatment. With the help of the learned Counsel appearing for the parties, I get carried the total of the medicine and hospital bills, which are placed on record. The total of which comes to Rs.76,967/-. The appellant is certainly entitled to receive the aforesaid amount under the head of medical expenses. I accordingly hold the appellant entitled to receive the said amount.

11. The Tribunal has awarded the compensation of Rs.1,25,000/- towards the other heads i.e. towards pain and sufferings and loss of future prospectus. I do not see any reason to cause any interference in the amount so awarded by the Tribunal.

12. Adding the said amount, the total amount of compensation payable to the appellant comes to Rs.8,06,767/-. In the facts and circumstances of the case, it appears to me that,

this will be the just and fair compensation payable to the appellant.

13. For the reasons stated above, the following order is passed.

ORDER

(i) The appellant is held entitled for the enhanced compensation of Rs.2,98,767/-.

(ii) Respondents No.1 and 2 shall jointly and severally pay the aforesaid amount of enhanced compensation to the appellant – claimant with interest thereon at the rate of 9% per annum from the date of filing of the appeal till actual realization of the said amount.

(iii) Award be modified accordingly.

(iv) Deficit Court fee, if any, be recovered by the appellant – claimant.

. Appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)