

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 FIRST APPEAL NO. 588 OF 2014

Ashok s/o Vasantrya Govindpurkar,
Age 58 years, Occupation Agri. and
Service, R/o Savewadi Tq. Latur
Dist. Latur.

...Appellant.
(Orig.Claimant)

VERSUS

- 1) Arifkhan s/o Yusufkhan Tej,
Age Major, Occupation Driver,
R/o Latur.
- 2) Smt. Punam w/o Vijaygopal Agarwal,
Age 36 years, Occupation Household,
R/o Maroti Nagar, Latur.
- 3) The United India Insurance Co.Ltd.,
Through Its Branch Manager,
Tilak Nagar, Latur.

...Respondents.

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Advocate for Appellant : Mr. A. S. Deshpande.
Advocate for Respondent No.3 : Mr. S. G. Chapalgaonkar.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-08-2019.

ORAL JUDGMENT :

1. Present appeal has been filed by the original claimant for enhancement in the compensation awarded in his petition under Section 166 of Motor Vehicles Act i. e. Motor Accident Claim Petition

No.233 of 2010 by learned District Judge -2, Latur on 04-10-2013.

2. Taking into consideration the fact that the scope of the appeal is very much limited that is in respect of enhancement in the compensation and the fact that as regards the finding that the claimant - appellant had suffered permanent physical disability in vehicular accident which was caused due to the rash and negligence driving on the part of the respondent No.1 while he was driving the offending vehicle belonging to respondent No.2 and insured with respondent No.3; there is no need to have any discussion on the said point.

3. Heard both sides. It has been vehemently submitted on behalf of the appellant that, the learned Tribunal has granted meager amount though the permanent physical disability which was sustained by the claimant was to the extent of 22 %, so also the non- pecuniary damages have not been properly awarded.

4. Per contra, the learned advocate appearing for the Insurance Company submitted that, the claimant has not suffered any permanent financial disability taking into consideration the fact that the Income Tax Returns which he had filed showed increase in his

income for the subsequent period, and therefore, the lump-sum granted by the learned Tribunal is correct. So also the amount granted under other heads is also just and proper.

5. The claimant is an agriculturist as well as he is having business i.e. a business of running a 'Mangal Karyalaya' which also used to provide services of the catering, decoration, lighting stage etc. That means, he used to give all those facilities on rent which he could do now also. The learned Tribunal has take a note of the Income Tax Returns which have been produced on record by the claimant which showed increase in his income for the subsequent period. It is stated that, the claimant was required to engage a manager due to his disability and towards the salary of the manager, he has paid Rs.5,000/- per month. Perusal of the record would show that, now after the disability certificate is issued and then at the time of evidence the services of the manager have been discontinued. Still when there is increase in the income of the claimant, the lump-sum that has been granted by the Tribunal appears to be just.

6. The claimant had sustained fracture to his leg as well as arm. The Tribunal has awarded Rs.20,000/- towards pain and sufferings. This appears to be on a lessor side, and therefore, further amount of

Rs.25,000/- is granted to the claimant towards pain and sufferings. As regards medical expenses are concerned, the Tribunal has granted proper compensation, however no amount has been granted towards attendance charges and transportation. Taking into consideration his total period of hospitalization of 13 days further amount of Rs.25,000/- is required to be awarded towards attendance and transportation. Under such circumstance, the appeal deserves to be allowed partly to that extent only. Hence, following order.

ORDER

- 1) The appeal is hereby partly allowed.
- 2) The Judgment and award passed by Ex-officio Member of MACT, Latur in MACP No.233 of 2010, dated 04-10-2013, is hereby set aside to the extent of quantum only and modified as follows ;

"The respondents No.1 to 3 should pay jointly and severally compensation of Rs.3,20,000/- (in words rupees three lac twenty thousand) to the claimant including amount under 'No Fault Liability' along with interest @ of 7.5 % per annum from the date of petition till actual realization of the entire amount."

- 3) The amount already deposited towards the award passed by the learned Tribunal be adjusted towards the modified award.
- 4) Award be modified accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.