

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 597 OF 2010

Pandurang s/o Manik Chaudhari
Age 51 years, occ. Business
r/o Surpan, Post Ghodade,
Tq. Sakhri, Dist. Dhule

Appellant

Versus

1. National Insurance Company Ltd.
Dhule Branch,
Dhule.
2. Gurunath s/o sharanappa Dhobi
Occ. Business
r/o Tripuranath, Basava Kalyan
Dist. Bidar,
Karnataka 585 327.

Respondents

Mr. P.S. Patil, advocate for appellant.
Mr. D.V. Soman, advocate for respondent no. 1.

CORAM : P.R. BORA, J.
DATE : 4th MARCH, 2019

JUDGMENT :

1. Heard Mr. Patil, learned counsel for appellant and Mr. Soman, learned counsel for respondent no. 1 – insurance company.
2. The appellant has preferred the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claim Tribunal, Dhule in Motor Accident Claim Petition No. 456/2006 filed by the present appellant decided on 10.07.2007.

3. The aforesaid claim petition was filed by the present appellant, who is hereinafter referred to as the 'claimant', seeking compensation on account of the injuries caused to him in a vehicular accident happened on 29.11.2003 having involvement of truck bearing registration no. MH 12 Q 9606 owned by present respondent no. 2 and insured with respondent no. 1 – insurance company. The claimant had claimed compensation of Rs.5,00,000/-. It was his contention that because of the injuries caused to him in the alleged accident and the permanent disablement suffered, he lost his earning capacity to the substantial extent and also he is permanently deprived from enjoying the amenities in life in future. The petition was resisted by respondent-insurance company on various grounds. The Tribunal, after having assessed the oral and documentary evidence produced on record by the claimant, held the claimant entitled for total compensation of Rs.1,70,000/- inclusive of No Fault Liability compensation. It is the contention of claimant in the present appeal that the amount of compensation as has been awarded by the Tribunal is not proper. The claimant has therefore sought enhancement in the amount of compensation so awarded.

4. Mr. Patil, learned counsel for the claimant submitted that the Tribunal has erred in not considering the fact that the left leg below knee of the present appellant was required to be amputated because of the injuries caused to him. Learned counsel further submitted that the Tribunal has also failed in appreciating that because of the permanent disablement suffered by the claimant, substantial loss has been caused to the businesses which were being run by the claimant. Learned counsel submitted that in the

circumstances, entire claim of Rs. 5,00,000/- was liable to be decreed in toto. Learned counsel therefore prayed for adequate enhancement in the amount of compensation.

5. Mr. Soman, learned counsel for respondent - insurance company submitted that the Tribunal has passed a well reasoned order and no interference is called for in the impugned judgment and award. Learned counsel invited my attention to the discussion made by the Tribunal in paragraphs no. 11 and 12 of the judgment and submitted that no case for enhancement of compensation is made out. Learned counsel therefore prayed for dismissal of the appeal.

6. I have given due consideration to the submissions made by learned counsel appearing for the parties. I have perused the impugned judgment and award as well as the evidence on record. Insofar as the amount of compensation as has been assessed by the Tribunal towards loss of income caused to the claimant because of the injuries sustained by him in the alleged accident is concerned, I see no reason to cause any interference since the Tribunal has properly considered the evidence which was brought on record. From the discussion made by the Tribunal and after having gone through the record of the case, it appears that the claimant did not place on record sufficient documentary evidence to show his income as well as loss allegedly caused to him in his income after occurrence of the alleged accident. However, compensation of Rs. 25,000/- awarded by the Tribunal towards general damages appears to be wholly unjust and improper. I cannot be lost sight of that due to the injuries suffered by the

claimant in the alleged accident his left knee was required to be amputated. Photograph of the claimant is placed on record before the Tribunal, from which it can be easily gathered that for the entire future life, the claimant is deprived from enjoying the amenities of life. As such, it appears to me that there is scope for enhancement in the amount of compensation under the aforesaid heading. It appears to me that if the amount of compensation is enhanced by Rs. 50,000/-, it would meet the ends of justice. In the result, following order is passed :

ORDER

- i) Claimant is held entitled to enhanced compensation of Rs. 50,000/-.
- ii) Respondents no. 1 and 2 shall jointly and severally pay enhanced amount of compensation with interest accrued thereon at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation.
- iii) Appeal stands partly allowed in the aforesaid terms.

(P. R. BORA, J)