

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2117 OF 2010

Prabhu S/o Narharrao Suryawanshi, Age 47 Years, Occ. Service, Resident of Kopra, Taluka Ahmedpur, District Latur	Appellant [original claimant]
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V E R S U S

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| 1 | Tukaram S/o Mahadeo Kivlekar, Age
Major, Occ. Owner of Ape Rikshaw,
Resident of Ahmedpur, Tq.
Ahmedpur, Dist. Latur | Respondents
[original
respondents] |
| 2 | The New India Assurance Co. Ltd.,
Through it's Branch Manager,
Chandra Nagar, Main Road, Latur | |

Mr. S.S. Manale, Advocate for the Appellant
Mr. M.M. Ambhore, Advocate for Respondent No.1
Mr. V.R. Mundada, Advocate for Respondent No.2

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CORAM : SUNIL K. KOTWAL, J.

DATE : 4th April, 2019

ORAL JUDGMENT :

The original claimant in Motor Accident Claims Petition No.17 of 2008 has filed this appeal for enhancement of compensation, against the judgment

and award passed by the Motor Accident Claims Tribunal [**Tribunal**", for short] Udigr Camp at Ahmedpur, whereby compensation of Rs.1,14,000/- inclusive of no-fault-liability with interest thereon @ 9% per annum was awarded by the Tribunal. Respondent No.1 is owner of the offending Minidoor Auto-Rikshaw bearing No. MH-24-F-6765 and respondent No.2 is insurer of the said offending vehicle.

2. Facts leading to institution of this appeal are that, on 05.12.2006, at about 06.30 p.m., when the claimant was proceeding from Ahmedpur Bus Stand, keeping himself on left side of Ahmedpur-Nanded road, at that time; the offending vehicle i.e. Rikshaw bearing No. MH-24-F-6765 [hereinafter referred as "**offending vehicle**"] came from backside and gave dash, resulting into various injuries to his both legs. Therefore, the claimant filed petition under Section 166 of Motor Vehicles Act for grant of compensation before the Tribunal.

3. The petition was proceeded *exparte* against respondent No.1. Only respondent No.2 resisted the petition by filing Written Statement [Exhibit-14]. The defence of respondent No.2 was that, the driver of the Rikshaw did not have valid and effective driving licence. Therefore, respondent No.1 committed breach

of condition of policy of insurance.

4. After considering the evidence placed on record, Tribunal held that the accident occurred due to rash and negligent driving by the driver of offending vehicle, resulting into permanent physical disability to the claimant. The Tribunal also held that respondent No.2 failed to prove that the owner of the offending vehicle committed breach of condition of policy of the insurance. Against those findings, no cross-objection is filed by respondent No.2-Insurance Company.

Therefore, only point for consideration that arises before this Court is, what would be the just and fair compensation payable to the claimant ?

5. Heard Shri S.S. Manale, learned counsel for the appellant and Shri V.R. Mundada, learned counsel for respondent No.2.

6. Learned counsel for the appellant submits that the Permanent Disability Certificate [Exhibit-26] is admitted by the respondents. He submits that the claimant sustained 33% permanent disability. However, he fairly concedes that, on the date of accident, the monthly salary of the claimant was Rs.7,000/- as helper in M.S.E.B. After the accident, there was

increase in salary of the claimant. He submits that claimant cannot prove that due to the permanent disability, there was loss of his earning capacity.

7. Learned counsel for the appellant however submits that under the non-pecuniary head, meager compensation is awarded by the Tribunal. He has given calculation of lists of medicines to the extent of Rs.71,125/-.

8. Learned counsel for respondent No.2 – Insurer submits that, as there was no loss of income due to permanent disability, compensation cannot be awarded to the appellant under the head of future loss of income. It has also been pointed out that the Certificate issued by M.S.E.B. department shows that during the period of hospitalization, the claimant was on medical leave and the salary was paid to him during the period of hospitalization. Thus, there was no loss of income to the appellant during the period of hospitalization.

9. After going through the Award passed by the Tribunal, it appears that the Tribunal awarded compensation of Rs.38,000/- to the claimant for his future prospects and compensation of Rs.71,090/- towards his medical expenses. In addition to this, the Tribunal has awarded compensation of Rs.5,000/- under

the head of pains and sufferings. Accordingly, total compensation of Rs.1,14,000/- was awarded to the claimant.

10. In this appeal, bills of medicines are filed on record by the claimant. After going through the documents, it reveals that the claimant has paid an amount of Rs.71,125/- towards medicines. By rounding up this figure, compensation of Rs.72,000/- deserves to be awarded to the appellant under the head of medical expenditure. In addition to this, one Discharge-Card issued by the Hospital is placed on record, which shows that the claimant was admitted in the Hospital at Ambajogai, District Beed, from 05.12.2006 to 26.01.2007. Thus, the claimant was hospitalized for a period of 52 days. From the deposition of claimant, it appears that he had spent Rs.10,000/- towards his hospital attendant charges. This compensation of Rs.10,000/- is awarded under the head of attendant charges. From the testimony of the claimant, it appears that he spent Rs.12,000/- towards special diet. This expenditure appears to be reasonable and, thus, compensation of Rs.12,000/- is awarded under the head of special diet. As the earning capacity of claimant is not affected, no compensation can be awarded to him under the head of loss of future earning. As no evidence is available on record which shows that due to amputations, claimant is debarred

from further promotions and the compensation awarded @ Rs.38,000/- towards loss of future prospect, needs to be maintained, in absence of cross-objection filed by the respondents. Under the pecuniary heads,, the claimant is entitled to compensation of Rs.1,32,000/-.

11. In addition to this, claimant is entitled to compensation under the head of loss of amenities. It cannot be ignored that due to amputation of one leg, the claimant cannot walk in normal manner throughout his future life. In other words, due to permanent disability, the claimant has become cripple for his entire life. Thus, compensation of Rs.1,00,000/- is awarded to the claimant under the head of loss of amenities. In addition to this, considering the nature of the injuries sustained by the claimant and surgery undergone by him for amputation of his left leg and for fixing of rod in his right leg, compensation of Rs.50,000/- needs to be awarded to him under the head of pains suffering and agony. Thus, under different heads, the claimant is entitled for total compensation of Rs.2,82,000/-. The claimant is also entitled for interest on this compensation amount @9% per annum from the date of filing of petition till recovery of this amount.

12. In view of above, this Court has come to conclusion that this appeal deserves to be partly

allowed.

13. In the result, First Appeal No.2117 of 2010 is partly allowed.

14. The Award passed by the Tribunal is modified to enhance the compensation to the tune of Rs.2,82,000/- with interest thereon @9% per annum from the date of filing of the petition till its realization. The compensation is inclusive of no-fault-liability compensation received by the claimant.

14. Award be modified in abovesaid terms.

15. The parties to bear their respective costs of the appeal.

16. The First Appeal is disposed of in above terms.

(SUNIL K. KOTWAL, J.)