

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

FIRST APPEAL NO.3725 OF 2016

Sajed Khan s/o Sikandar Khan,
Age 35 yrs., Occ. Business and
agriculture (now Nil),
R/o Tadborgaon, Tq. Manwat,
Dist. Parbhani.

... Appellant.

... **Versus** ...

- 1 Dinesh Omprakash Holani,
Age : major, Occ. Business,
R/o Malegaon, Tq. Ardhapur,
Dist. Nanded.
- 2 National Insurance Company Ltd.,
through its Divisional Manager,
Guru Govind Singh Market,
Nagina Ghat road, Nanded.

... Respondents.

...

Mrs. A.N. Ansari, Advocate for the appellant
Respondent No.1 – served through paper publication
Mr. V.N. Upadhye, Advocate for the respondent No.2

...

WITH

FIRST APPEAL NO.3726 OF 2016

Babar Khan s/o Gulsher Khan,
Age 51 yrs., Occ. Business and
agriculture (now Nil),

R/o Tadborgaon, Tq. Manwat,
Dist. Parbhani.

... **Appellant.**

... **Versus** ...

- 1 Dinesh Omprakash Holani,
Age : major, Occ. Business,
R/o Malegaon, Tq. Ardhapur,
Dist. Nanded.
- 2 National Insurance Company Ltd.,
through its Divisional Manager,
Guru Govind Singh Market,
Nagina Ghat road, Nanded.

... **Respondents.**

..

Mrs. A.N. Ansari, Advocate for the appellant
Respondent No.1 - served through paper publication
Mr. V.N. Upadhye, Advocate for the respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th JULY, 2019

JUDGMENT :

1 Learned Advocate Mr. V.N. Upadhye makes a statement that he would file Note of Appearance in First Appeal No.3725 of 2016. He may file it within two weeks.

2 Both the First Appeals have been filed by original claimants for enhancement in the compensation granted by learned Member, Motor Accident Claims Tribunal and Adhoc District Judge-2, Parbhani on 19.07.2016. The appellant in First Appeal No.3725 of 2016 had filed M.A.C.P. No.246/2012, whereas the appellant in First Appeal No.3726 of 2016 had filed M.A.C.P. No.247/2012 for getting compensation.

3 Both of them had come with a case that they were proceeding on motorcycle bearing No.MH 22/G-6445 when they met with accident at about 11.30 a.m. on 18.03.2012. The said accident was caused due to the rashness and negligence on the part of driver of Truck bearing No.MH 26/H-8321 which had given dash to them from back side. Appellant Sajed Khan was pillion rider, whereas appellant Babar Khan was the rider of the motorcycle. It is stated that both of them sustained fracture injuries. They were treated, however, their injuries have turned into permanent disability. The said offending truck was owned by respondent No.1 and it was insured with respondent No.2 on the date of the accident. Appellant Sajed Khan contended that he was 32 having brick kiln business and also agricultural giving him income of Rs.10,000/- per month. He has stated that due to disability he is unable to work and he has lost 100% working capacity. Babar Khan submitted that he was 60 years old doing agriculture and business of

bricks in partnership with Sajed Khan and was earning Rs.10,000/- per month. Due to disability he has also lost 100% working capacity. Therefore, they both had filed the respective petitions claiming compensation under Section 166 of the Motor Vehicles Act, 1988.

4 Respondent No.1 failed to appear and therefore, petitions proceeded ex parte against him. In both the matters respondent No.2-insurance company filed written statement, denied all the averments in the petition and took statutory defences.

5 Taking into consideration the rival contentions, issues were framed in both the matters. Claimants have led evidence. After considering the evidence on record in both the matters, the learned Tribunal has come to the conclusion that both the petitioners met with accident arising out of use of truck and the said accident had taken place due to the negligence on the part of truck driver. It was also held that both the petitioners have sustained permanent disability in the accident. Claimant Sajed Khan has been awarded compensation of Rs.2,81,000/-, whereas Babar Khan has been awarded compensation of Rs.2,46,500/-. Interest has been awarded @ 7% per annum from the date of the petition till actual realization of the entire amount. Present appeals filed for enhancement in the compensation.

6 It will not be out of place to mention here that the insurance company has not filed appeal or raised cross objections. Under such circumstance, whatever the findings have been given in respect of the permanent disability sustained by the petitioner as well as fact of accident and negligence, it had achieved finality. The scope of the appeals is limited to the quantum that too enhancement.

7 Heard learned Advocate Mrs. A.N. Ansari for the appellant and learned Advocate Mr. V.N. Upadhye for the respondent No.2. Perused the record. In order to cut short it is stated, that both the learned Advocates have vehemently submitted in support of their respective contentions. Taking into consideration the scope of the appeals following point arises for consideration. Findings and reasons for the same are as follows.

Whether the compensation granted by learned Member, Motor Accident Claims Tribunal, Parbhani in both the respective petitions requires enhancement ? If yes, on what count and to what extent ?

REASONS

8 The first point, that has been raised by the learned Advocate for the appellant is in respect of the fact that the claimants had sustained 35%

permanent disability, however, the learned Tribunal on its own has considered that Sajed Khan would have suffered 20% disability, whereas Babar Khan would have sustained 25% disability only. It was without any reason and therefore, it ought to have been in both the cases @ 35% and the calculation of loss of income ought to have been on that basis. It was submitted that both the petitioners had given their income @ Rs.10,000/- per month and it ought to have been accepted by Tribunal. Per contra, the learned Advocate appearing for the respondent No.2 submitted that neither they have proved income nor the disability certificate was proved. Under such circumstance, whatever reason has been given by the Tribunal has been accepted by the insurance company.

9 Sajed Khan had come with a case that he had two sources of income, agriculture as well as brick kiln giving him Rs.10,000/- per month, whereas Babar Khan says that he has agriculture as well as in partnership with Sajed Khan he was doing the business in bricks giving some amount of income. However, except their bare words there is nothing on record. They had not filed 7/12 extract to prove that they had agricultural land. So also, Sajed Khan had not produced on record any evidence to show that he was running brick kiln. Under such circumstance, in both the cases the learned Tribunal was justified in invoking notional income. Further, it is also to be

noted that the Medical Officer was not examined, who has given the certificate of permanent disability to the petitioners. Yet, the Tribunal presumed base on the nature of injuries sustained by them, that they would have sustained disability to the extent of 20% and 25% respectively. It appears that the age of respective petitioners was also taken into consideration by the Tribunal, at that time. Taking into consideration that disability the loss of income has been assessed. Under such circumstance, no fault can be found in that assessment.

10 As regards medical bills are concerned, various bills of expenditure on medical treatment were produced to show that they had incurred Rs.95,440/- and Rs.1,16,492/- respectively, but both of them had not examined any competent witness to prove those bills. Under the said circumstance, it was held that they were entitle to get Rs.80,000/- and Rs.1,00,000/- respectively under the head of expenditure of medical treatment. It is to be noted that as regards medical bills and receipts are concerned, each and every time, mere production of those bills may not be sufficient but then for proof of the same, the competent person should be examined and taking into consideration that aspect the view taken by the learned Tribunal deserves to be upheld.

11 Under the head of special diet, travelling allowance and loss of

earning during medical treatment, both have been awarded amount of Rs.25,000/-, which appears to be a reasonable amount. However, it appears that the learned Tribunal has not granted compensation under the head pain and sufferings. Reasons have also not been assigned as to why he has not given any amount under that head. That is the only lacuna, that can be found in Judgment and Award passed by the Tribunal. Taking into consideration the age of the petitioners and the injury sustained by them, so also, the treatment, that was required to be taken by them including the hospitalization amount of Rs.30,000/- is awarded to Sajed Khan under the head of pain and sufferings and amount of Rs.50,000/- is awarded to Babar Khan under the head pain and sufferings, to that extent the enhancement in the compensation deserves to be made. Point is, therefore, answered accordingly. For the above said reasons following order is passed.

ORDER

1 Both the appeals are partly allowed.

2 The Judgment and Award passed in M.A.C.P No.246/2012 by learned Member, M.A.C.T. and Adhoc District Judge-2, Parbhani dated 19.07.2016 is hereby set aside to the extent of quantum only and it is modified as follows.

"2. Respondent Nos.1 and 2 do pay or deposit, jointly and severally, the compensation amount of Rs.3,11,000/- (Rupees Three Lac and Eleven Thousand only) (including No Fault Liability amount) to the petitioner "

3 Rest of the Award is kept as it is.

4 The Judgment and Award passed in M.A.C.P. No.247/2012 by learned Member, M.A.C.T./Adhoc District Judge-2, Parbhani dated 19.07.2016 is hereby set aside to the extent of quantum only and it is modified as follows.

"2. Respondent Nos.1 and 2 do pay or deposit, jointly and severally, the compensation amount of Rs.2,96,500/- (Rupees Two Lac Ninety Six Thousand and Five Hundred only) (including No Fault Liability amount) to the petitioner "

Rest of the Award kept as it is.

5 Payments already made by the respondent No.2 towards these Judgments and Awards be adjusted towards modified amount.

6 Award be drawn accordingly.

7 No order as to costs.

(Smt. Vibha Kankanwadi, J.)