

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 FIRST APPEAL NO.2062 OF 2012

Prabhakar s/o Karba Dubbewar,
Age 52 years, Occupation Business,
R/o Tulaknagar, Nanded Tq Dist.
Nanded.

...Appellant.
(Org.Claimant)

VERSUS

1. Madhavrao s/o Narayanrao Nimbalkar,
Age Major, Occupation Business,
R/o Maganpura, Nanded Tq. Dist.
Nanded.

2. United India Insurance Co. Ltd.,
Through Its Divisional Manager,
Divisional Office, Nanded.

...Respondents.
(Org.Respdts.)

...

Advocate for Appellant : Mr. Katneshwarkar P. R.

Advocate for Respondent No.1 : Mr. P. S. Anerao

Advocate for Respondent No.2 : Mr. J. R. Patil holding for Mr A. G.
Kanade.

...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13-08-2019.

ORAL JUDGMENT :

1. Present appeal has been filed by the original claimant for enhancement in the compensation.

2. The Present appellant / claimant filed MACP No.794 of 2008 under Section 166 of Motor Vehicles Act for getting compensation. He was aged 52 at the time of accident i.e. on 02-07-2008. He was a businessman,

earning around Rs.20,000/- per month. He was walking to Anantnagar and while crossing the road, he was dashed by Hero Honda motorcycle bearing No.MH-26/J-8447. He sustained fracture to his right leg and his face has been disfigured. He has taken treatment between 02-07-2008 to 23-07-2008. He was operated and implant was inserted in his leg. The claimant contends that, the accident took place due to the sole negligence on the part of the respondent No.1 who is the owner as well as driver of the said vehicle and the said vehicle was insured with respondent No.2 on the date of accident. In all compensation of Rs.2,50,000/- was claimed along with interest @ of 12 % per annum.

3. Respondents No.1 and 2 resisted the claim of the claimant by filing separate written statements. They denied age, occupation and income of the claimant. They have also denied the narration about the manner in which the accident took place. The Insurance company has taken statutory defence also.

4. After framing the issues, claimant led evidence. Respondents preferred not to lead any evidence. After considering the evidence on record, the petition came to be partly allowed. Respondents No.1 and 2 were directed to pay compensation of Rs.64,622/- along with interest @ 12 % per annum from the date of the petition till actual realization of entire amount. This appeal has been filed for enhancement in the said

compensation.

5. Heard learned advocate Mr. P. R. Katneshwarkar for appellant, Mr. P. S. Anerao for respondent No.1 and Mr. J. R. Patil holding for Mr A. G. Kanade for respondent No.2.

6. It has been vehemently submitted on behalf of the appellant that, the learned Tribunal has granted less amount of compensation which cannot be contended as just compensation. Though the appellant had not filed any evidence about income, taking into consideration his occupation as business, appropriate amount ought to have been considered as his income. So also his age has been taken on higher side ignoring the age shown in the documents exhibited by the Tribunal, therefore the multiplier has been wrongly applied. The treating doctor was examined who had stated that, the disability of the claimant would be around 30 % to 40 %, however the learned Tribunal has taken it at 10 % on the point that the Medical Officer who had issued the certificate was not examined. That amount needs to be corrected. The amount for medical expenditure has been unnecessarily reduced on the point that, there is overwriting. It was in ignorance to the testimony of the doctor who had issued that bill. It was also submitted on behalf of the

appellant that, proper amount ought to have been awarded under the heads of pain and sufferings and other non pecuniary heads.

7. Per contra, the learned advocate appearing for the respondent No.2 submitted that, though the appellant had not examined the Medical Officer yet the Tribunal went on to hold that the claimant might have suffered permanent financial disability to the extent of 10 % which was against the decision by the Apex Court in, *Rajesh Kumar Alias Raju Versus Yudhvir Singh And Another*, reported in (2008) 7 Supreme Court Cases 305. As regards other heads are concerned the reasons given by the Tribunal are correct, and therefore, no case is made out by the claimant for enhancement in the compensation.

8. Taking into consideration the above referred submissions, following points arise for determination, finding and reasons for the same are as follows;

(1) Whether the Tribunal was justified in granting compensation of Rs.64622/- only ?

(2) Whether the said amount of compensation needs enhancement ? If yes, at what rate ?

9. Since both the points are interconnected, they are discussed

together and at the outset it can be said that since the respondents have not filed any appeal challenging the findings or reasons which have gone against them, the appeal is restricted to the enhancement only. Now as regards the income of the claimant is concerned, though he is contending that, he is a businessman, he has not produced any documentary evidence to support his contention. Under such circumstance, the Tribunal was justified in invoking the notional income theory. Now as regards age is concerned, no doubt the police papers show his age as 52 but then there was no hurdle for him to produce those documents proving his age. Under such circumstance though for non-examination of the Medical officer who issued the disability certificate yet the loss of income has been calculated @ 10 % loss of earning capacity by the Tribunal requires no interference and that amount comes to Rs.28,800/-.

10. The record shows that, the claimant suffered from right leg fracture of Tibia Fibula, he was operated, implant was inserted. Under such circumstance, the amount of Rs.5000/- given under the head of pain and sufferings, appears to be very much on the lessor side and it requires to be enhanced. Accordingly claimant is awarded amount of Rs.30,000/- towards pain and suffering and taking into consideration the fact that the implant has been inserted and it has not been brought

on record that yet it is removed or not but still taking into consideration the testimony of PW 2 Dr. Prakash Bhandari, further amount of Rs.20,000/- is awarded under the head loss of amenities. Further the said doctor who had treated the claimant has specifically stated that, he has received amount of Rs.32,700/- towards the hospital charges, However, that has been reduced by the Tribunal to Rs.22,700/- arbitrarily on the ground that there is overwriting in the bill. In fact when the author of that document was examined and he has specifically stated that he has received that amount, the Tribunal ought to have accepted the testimony also. Therefore, the said amount of Rs.32,700/- is given to the claimant under the said head of hospital charges. The medicines worth Rs.8,122/- were purchased and the bills have been produced to that effect. Those have been awarded by the Tribunal, and therefore, that amount is also required to be given to the claimant.

11. Further perusal of impugned Judgment would show that, no amount was awarded towards attendance charges, transportation and other miscellaneous expenses, and therefore, amount of Rs.8,000/- is awarded towards the attendance charges for the hospitalization of the claimant + transportation and other miscellaneous expenses. Thus, the claimant is entitled to get Rs.1,27,622/-. The amount which has

been granted by the learned Tribunal is on the lessor side and therefore it deserves enhancement. Though the claimant had claimed compensation of Rs.2,50,000/-, the evidence adduced by the claimant is not supporting the said claim and therefore the appeal deserves to be partly allowed. Hence, following order.

ORDER

1) The appeal is hereby partly allowed with no order as to costs as regards appeal.

2) The Judgment and award passed by the learned Adhoc District Judge-1 and Member MACT, Nanded in MACP No.794 of 2008, dated 05-09-2012 is hereby set aside and modified to the extent of quantum only as follows ;

"Respondents No.1 and 2 shall jointly and severally pay compensation of Rs.1,27,622/- (in words rupees one lac twenty seven thousand six hundred twenty two only) along with interest @ 12 % per annum from the date of the petition till actual realization of the entire amount to the petitioner."

3) It is clarified that, rest of the award is kept as it is.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-.