IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.77 OF 2011

Mithun s/o Murlidharrao Deodikar
Age 26 years, Occu.Service
R/o Samarthanagar, Osmanabad
Tq. and Dist.Osmanabad. .. APPELLANT
[Orig.Claimant]

VERSUS

1] Adikrao s/o Ramchandra Mane
Age : Major, Occu. Business,
R/o Kiwale (Vikas Nagar)
Dehu Road, Tq. Haveli,
Dist.Pune.

2] Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch at Main Road,
Osmanabad. .. RESPONDENTS

....
Shri V.P.Golewar,Advocate for the Appellant
Shri V.N.Upadhye, Advocate for Respondent no.2.
....

CORAM : MANGESH S. PATIL, J.
RESERVED ON : 05.11.2019.
PRONOUNCED ON : 25.11.2019.

JUDGMENT :-

Heard.

2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988, by the original claimant being aggrieved and dissatisfied by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal,Osmanabad in his injury claim under Section 166 of that Act, awarding him total compensation of Rs.1,86,000/- with interest at the rate of 7.5% p.a. inclusive of the interim compensation received by him under Section 140 of that Act.

3] The only question of quantum of compensation needs to be gone into in this Appeal, since the respondents who are the owner and insurer of the offending vehicle have not preferred Appeal challenging the judgment and award holding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle and that the respondent no.2 insurance company had failed to prove its defence regarding breach of the terms and conditions of the contract and that both of them were liable to compensate the appellant, jointly and severally.

4] The learned advocate for the appellant submitted that inspite of there being concrete evidence in the form of bills demonstrating that the appellant had spent for medical treatment and medicines to the tune of Rs.2,08,840/-. The tribunal awarded him only Rs.80,000/- under that head without assigning cogent and sufficient reasons to discard the bills. He further submitted that the Tribunal also failed to consider that the appellant was undergoing a training at the relevant time and would have easily got an employment with the employer with whom he was working as a trainee. He also argued that the Tribunal also failed to award him just compensation under the head of transportation, special diet and pains and sufferings. The learned advocate therefore prayed to determine the compensation afresh under all the heads.

5] Per contra, the learned advocate for the respondent no.2 insurance company supported the impugned judgment and award.

6] The respondent no.1 who is the owner of the vehicle has not appeared inspite of service of notice and could not be heard.

7] A careful reading of the impugned judgment shows that the Tribunal did note that the appellant was treated as an indoor patient between 8/9/2006 and 13/9/2006 and even after discharge he was required to consult the doctor as an OPD patient. It also noted that Dr.Jadhav (PW 2) had not stated that because of the accidental injuries the appellant was unable to work as an Automobile Engineer and that the appellant was having some pains or was having any loss in the capacity to earn. In doing so, the Tribunal also noted that during his cross examination the appellant also admitted that even on the date of deposition he was serving in Pune and earning Rs.18,000/- per month. Thus the Tribunal held that the accidental injury had not resulted in any adverse effect on the earning capacity of the appellant. The Tribunal however, holding that there was total loss of earning during the period of treatment for a period of 6 months assessed compensation under the head of actual loss at the rate of Rs.6000/- p.m. for a period of 6 months and assessed compensation under that head at Rs.36,000/-.

8] Having seen the deposition of the appellant and both the doctors, in my considered view the observation and the conclusion of the Tribunal holding that though he had suffered fracture of right femur and right tibia, the injuries had not adversely affected his earning capacity. However, conspicuously inspite of Dr.Jadhav (PW 2) having certified that the appellant had suffered

25% permanent disability and issued a certificate to that effect (Exh.51) the Tribunal has not awarded him anything under the conventional head which notionally is taken at Rs.1000/- for every per cent of disability. Therefore, even if the disability has not resulted in loss of earning capacity, the appellant is entitled to claim compensation for permanent disability of 25% at the rate of Rs.1000/- for every per cent of disability i.e. Rs.25,000/-.

9] Now turning to the head of actual expenditure for medical treatment and medicines, the appellant specifically stated that he had spent around Rs.3 lakhs. In support of his version, he produced number of bills (Exh.34/1 to 34/35) and (Exh. 36/1 to 36/21). The Tribunal has refused to accept some of these bills for the reason that those don't bear signature of the person issuing it and some amounts are stated to be repeated. But conspicuously these observations of the Tribunal are too vague to ascertain as to which of these bills are duplicate or doubtful. Without giving any particulars, the Tribunal has refused to accept some of the bills and has only held the appellant to be entitled to receive Rs.80,000/- under this head. The Tribunal ought to have specifically pointed out as to which of these bills are doubtful or duplicate. It failed to give the particulars.

10] Be that as it may, on careful perusal of these bills it reveals that only the bill (Exh.36/1) purportedly does not bear any signature. However, a careful perusal of these bills would reveal that these are in fact series of bills mentioning at the end of the initial 4 bills that the bill was incomplete and was being "continued". The last such bill i.e. cash memo bears signature of the Pharmacist and therefore, this cash memo no.2252 appears on each of these bills. This bill in fact seems to have been generated by use of a computer and a printer and the space in each of the bill which can be generated from a printer being insufficient to contain all the items, the next leaf of bill seems to have been used to generate entire cash memo No.2252. Same is the case with cash memo no.2267 which used couple of leaves and the signature appears on the last leaf. Again, the bill of Lokmanya Hospital, Nigdi (Exh.36/8) though apparently does not bear any signature it is clearly a bill which is generated on a computer and also bears a rubber stamp indicating that the amount therein has been paid. Therefore, as far as the observation and conclusion of the learned Chairman of the Tribunal discarding the bills for want of signature, on my reconsideration of the documentary evidence, are clearly erroneous and unsustainable.

11] So far as the duplication is concerned, again the impugned judgment does not specifically indicate or give particulars as to which amounts are being claimed twice. Obviously the exercise has to be undertaken by this Court to find out whether and which of the amounts are being claimed twice. With the assistance of the learned advocates of both the sides I have undertaken such an exercise and could notice that the Final bill (Exh.34/2) issued by Lokmanya Hospital is for a aggregate amount of Rs.87,047/- which includes the amount of Rs.40,000/- received in cash as a deposit and the receipts (Exh.34/24, 34/25 and 34/26) are the receipts in respect of such advance/deposit of Rs.40,000/- in aggregate. Perhaps for this reason the Tribunal seems to have discounted such first set of bills (Exh.34/2 to 34/35) by deducting Rs.40,000/-. However, conspicuously, while giving the calculation on a separate page (C-38) from the record and proceeding, the appellant had shown only an amount of Rs.42,047/- against the bill of the Lokmanya Hospital (Exh.34/2) and has not shown Rs.87047/-. Thus there was no apparent reason for the Tribunal to reduce the actual expenditure of Rs.1,04,879/- from these set of bills (Exh.34).

12] As far as the second set of bills (Exh.36) are concerned, again with the assistance of the learned advocates of both the sides, I have undertaken the exercise of verifying the bills, a summary of which is prepared and can be found at page (C-50) of the record and proceedings of the Tribunal. It shows that the receipt (Exh.36/13) is of an amount of Rs.42,047/- paid to Lokmanya hospital which in fact is a receipt in respect of which the bill (Exh.34/2) has been issued and in the summary of calculation (C-38) this amount of Rs.42,047/- has been included. Obviously, this cannot be allowed. To this extent no fault can be found with the Tribunal in refusing to pay this amount of Rs.42,047/- twice over but ignoring this duplication there is no other duplication. After deducting Rs.42,047/- from the calculations from page No.(C-50) the total expenses would come to Rs.61,914/-. Thus the total medical expenses borne by the appellant would be Rs.1,04,879/- from the bills (Exh.34) and Rs.61,914/- from the bills at (Exh.36) excluding the receipt (Exh.36/13). Besides, these bills (Exh.34) also includes a bill (Exh.34/27) which is in fact a bill regarding transportation charges of Rs.3938/-. When compensation is being paid to the appellant separately under the head of travelling charges, may be collectively, this bill cannot be included while calculating the actual medical expenses. Therefore, even amount of Rs.3938/- needs to be deducted. Thus the compensation under the head medical bills and medical treatment comes to Rs.1,62,855/- but the Tribunal has wrongly assessed it at Rs.80,000/-

13] The Tribunal has considered and awarded in aggregate Rs.20,000/-

towards expenses incurred for attendant, travelling and special diet, I find no sufficient and cogent reason to interfere in this assessment.

14] However, the Tribunal has not assessed anything under the conventional head of pains and sufferings. The appellant had suffered couple of fractures and was required to take bed rest for about 6 months. He must have been required to undergo a Surgery and consequently he is entitled to claim a sum of Rs.20,000/- for pains and sufferings. Thus the just compensation according to my assessment under different heads would be as under :

1]	Permanent disability of 25%	Rs.25,000/-
2]	Medical treatment and medicines	Rs.1,62,855/-
3]	Pains and sufferings	Rs.20,000/-
4]	Actual loss of income	Rs.36,000/-
5]	Attendance,travelling and special diet	Rs.20,000/-
	Total	Rs.2,63,855/-

15] The Tribunal has not correctly assessed the compensation under the different well-recognized heads and has also failed to appreciate the evidence in respect of the actual medical expenses. The impugned judgment and award to the extent of quantum needs to be modified as discussed hereinabove.

16] The Appeal is allowed partly. The impugned judgment and award to the extent of quantum of compensation is modified. Instead of compensation assessed by the Tribunal the appellant shall be entitled to and the respondents 1 and 2 shall be, jointly and severally, liable to pay compensation of Rs.2,63,855/- together with interest at the rate of 7.5% p.a. from the date of the Petition which amount shall be inclusive of the amount received by the appellant under Section 140 of the Motor Vehicles Act.

[MANGESH S. PATIL, J.]

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