

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 778 OF 2020

The Branch Manager,
 Universal Sompo General Insurance Co. Ltd.
 Plot No. EL-94, TTC, Industrial Area, MIDC
 Mahape, New Mumbai – 400 071

... APPELLANT

VERSUS

1. Javed @ Jafar Khatik,
 Age – 21 years, Occu- Nil,
 R/o -100 Feet Road, Near Paultry Farm,
 Jamcha Mala, Dhule,
2. Shri Pandit Abhiman Patil,
 Age : 37 years, Occu- Driver,
 (Pick Up No. MH-15-DK-7203)
 R/o : A-9, Pulkit row house,
 Bhadrapad Sector, CIDCO,
 Nasik, Dist: Nasik.
3. Shri Dhepe Sandip Chandrabhan,
 Age: Adult, Occu: Vehicle owner,
 (Pick Up No. MH-15-DK-7203)
 R/o : Flat No. 11, Pruthivilok Apartment,
 Abhiyanta Nagar, Kamatwada, Nasik,
 Dist: Nasik.

... RESPONDENTS.

...

Mr. Aniruddha S. Usmanpurkar, Advocate for Appellant
 Mr. Amit Savale, Advocate for Respondent No. 1 (Absent)
 Respondent Nos. 2 and 3 - Served

...
CORAM : ANIL S. KILOR, J.

DATE : 15th MARCH, 2021

ORAL ORDER:-

In this appeal a challenge is raised to the Judgment and Award dated 21st November, 2019 passed by the Member, Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No. 543 of 2016 holding the claimant

entitled to receive compensation of Rs. 3,57,600/- to be paid jointly and severally by the respondents No. 1 to 3.

2. Brief facts of the case are as follows :

The claimant on 20-08-2015 was driving a vehicle *Chhota Hathi* bearing No MH-18-M-9148 which met with an accident, because of one Pick-up Van bearing No. MH-15-DK-7202 came from opposite direction and collided with vehicle of the claimant. The claimant sustained fracture injury to his right femur and also suffered grievous injuries on his ear and other parts of the body. He, therefore, filed petition under Section 163-A of the Motor Vehicles Act, 1988 against driver, owner and insurer of the Pick-up van involved in the accident for total compensation of Rs.7,00,000/-.

3. The Tribunal after considering the permanent disability suffered by the claimant to the extent of 55%, granted compensation to the tune of Rs.3,57,600/-. The correctness of the same is questioned in the present appeal at the best of Insurance Company.

4. Heard learned counsel for the appellant-Insurance Company.

5. The learned counsel for the appellant urged only a ground that if the loss of earning capacity of the claimant is considered, it is less than 55% whereas learned Tribunal considering the Doctors' certificate, certifying physical disability to the extent of 55%, granted compensation and thereby committed error.

6. To consider the contentions raised by the appellant, I have gone through the record and proceedings of the Tribunal and judgment impugned.

7. The learned Tribunal while arriving at the conclusion that the disability suffered by the claimant was to the extent of 55%, has considered oral evidence of Dr. Suryawanshi and Dr. Kazi available at Exhibits-30 and 32.

8. In the examination in chief of Dr. Suryawanshi, he has described the injuries as follows.

- (i) Patient had polytrauma
- (ii) Head injury with injury over occipital region.
- (iii) Right lower limb communitated fracture of right femur upper third.
- (iv) Left upper limb displaced communitated fracture of lower end of radius.
- (v) Right femur fracture fixation was done on patient and left radius fixed with K. wire. Patient complains of difficulty in sitting, squatting, waling and left writ joint restricted movements.

9. Dr. Suryawanshi further stated in his deposition that on examination he found following injuries:

Post traumatic right lower limb, right hip joint restricted movements external rotation 15 degree and abduction 10 degree with waisting of quadriceps muscles with impaired gait.

Left wrist joint deformity with restricted dorsiflexion 10 degree and palmar flexio 10 degree with waisting of left forearm muscles and decreased grip of left hand. Accordingly, I calculated the disability suffered by the patent to the extent of 55%.

10. Learned Tribunal on the basis of said evidence has arrived at the conclusion that disability suffered by the claimant is to the extent of 55%.

11. The Hon'ble the Supreme Court of India in the case of *Syed Sadiq and others Vs Divisional Manager, United India Insurance Company Limited*

reported in **2014 (2) Supreme Court Cases, 735**, has observed thus:

“6. This Court in Mohan Soni v. Ram Avtar Tomar, has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under:

“11. In a more recent decision in Raj Kumar v. Ajay Kumar, this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paras 10, 11 and 13 of the judgment in Raj Kumar, this Court made the following observations:

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a

percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co. Ltd.)

13. Ascertainment permanent disability on of the effect the actual earning of the capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

12. On the aforesaid touchstone if the facts of present case are considered, it will be revealed that the claimant has proved and established by oral as well

as documentary evidence, the nature of work he was doing prior to the accident i.e he was working as a driver, the injuries he suffered and permanent disability resulted because of said accident. He has further established the loss of future earning in view of the effect and impact of permanent physical disability, he suffered.

13. No contrary material has been brought on record by the appellant to show that even after suffering permanent disability as certified by the Doctors, the claimant is in a position to drive the vehicle as a driver, which was the only source of livelihood for him.

14. In that view of the matter and considering the evidence available on record, I am of the considered view that there is no perversity in the impugned Judgment and Award in granting the compensation by considering disability suffered by claimant to the extent of 55%. Accordingly, I pass the following order:

::: ORDER :::

- I. The first appeal is dismissed.
- II. No order as to costs.

**(ANIL S. KILOR)
JUDGE**

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