

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 623 OF 2004

Balu Manohar Raut,
Age : 35 years, Occu. : Hamal,
R/o. : Katpur, Tq. & Dist. Latur **... APPELLANT**

VERSUS

1. Vitthal Govind Togre,
Age : Major, Occu. : Business,
R/o. : Dahisar, Mumbai (East),
(As per Registrar's order appeal is
dismissed against respondents No.1)
2. Vikram Dnyanaba Suryawanshi,
Age : Major, Occu. : Driver,
R/o. : Hippersagar (Deleted),
3. The Branch Manager,
United Indias Insurance Co. Ltd,
Main road, Latur **... RESPONDENTS**

...

Mr. S.S. Shinde – Advocate for Appellant
Mr. S.S. Dargad h/f. Mr. S.S. Chapalgaonkar – Advocate for
Respondent No.3.

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CORAM : S.G. DIGE, J.
DATE : 8th September, 2022

JUDGMENT :

- . Appellant is seeking enhancement of compensation.

2. Brief facts of the case are as under :

On 16th February, 2002 when appellant was going on his bullock cart to his house, the jeep bearing registration No. MH-8615 came in rash and negligent manner from opposite direction and gave dash to the bullock cart. The appellant got injured in the said accident. Offence was registered against the jeep driver. Appellant - original claimant filed claim petition before the Member, Motor Accident Claims Tribunal, Latur (*for short 'the Tribunal'*) for getting compensation. The Tribunal has awarded Rs.52,000/- compensation. Against the said judgment and order, this appeal for enhancement of compensation.

3. It is contention of learned Counsel for appellant that, due to said accident appellant got permanent disablement. Appellant was coolie (Hamal) and his nature of work was to convey heavy sacks of food-grains and other items on back from one place to another. Due to the accident he cannot do his work as his left leg sustained 30% permanent disability. This aspect was not considered

by the Tribunal. The Tribunal has also not considered the fact of dependency as his whole family consisting of old mother, wife, son and three daughters depends upon him. He is only earning member of his family and due to the accident his source of income is completely came to an end. The Tribunal has not considered income of the appellant, not proper multiplier was applied while calculating the amount of compensation. Hence, requested to allow the appeal.

4. It is contention of learned Counsel for respondents that, appellant failed to produce any evidence to show his permanent disability before the Tribunal. The Tribunal has considered the medical expenses incurred by the appellant and on that basis the compensation is awarded. Hence, judgment and order passed by the Tribunal is legal and valid.

5. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

6. The Tribunal has not considered the monthly income

of the appellant. The Tribunal has observed that, appellant was working as coolie (Hamal) prior to the accident and due to the said accident he is unable to do the said work of coolie and consequently there is total loss of income. However, it cannot be said that because of fracture of tibia-fibula with consequential disability appellant is unable to do the said work. At the same time, it can be said that he is bound to suffer some inconvenience and difficulties because of the said disability of his work as Hamal. Considering this difficulty and disability, appellant is entitled for Rs.15,000/- as compensation for disability and consequential discomfort.

7. I am unable to understand that, on what basis the Tribunal has come to conclusion that, appellant was entitle for Rs.15,000/- as compensation for disability and consequential discomfort, when it has come on record that, appellant was admitted in Civil Hospital for treatment and consequently in the hospital of Dr. Agroya and he was indoor patient for about three (03) months and was required to spend Rs.45,000/- for medical

expenses. The disability certificate is at exhibit-33, which shows 30% disability.

8. The Tribunal has observed that, the medical evidence certainly establishes that the injury resulting permanent disability due to the accident. When the Tribunal has admitted that, there is permanent partial disability but the Tribunal has not considered notional income and has applied wrong multiplier method while making the calculations. Admittedly, appellant was working as coolie (Hamal) when the accident has occurred, hence, I am considering his monthly income of Rs.2,000/-. So also, the Tribunal has not granted the amount of future prospects to the appellant and also not applied multiplier. At the time of accident, appellant was 35 years old hence, multiplier of 16 is applicable.

9. Considering above all these facts and calculations appellant entitled for following compensation :

Sr. No.	Heads	Amount
1.	Monthly Income of Appellant	Rs.2,000/-

2.	Annual income	2000 x 12 = Rs.24,000/-
3.	Loss of earning capacity 10% (Limb-wise disability 30%)	Rs.2,400/-
4.	Addition of 40% Future Prospects	2400 + 960 = Rs.3,360/-
5.	Multiplier of 16 (claimant was 35 years old)	3360 x 16 = Rs.53,760/-
6.	Total Pecuniary Loss	Rs.53,760/-
7.	Medical expenses as awarded by Hon'ble Tribunal	Rs.22,000/-
8.	Pains and sufferings as awarded by Hon'ble Tribunal	Rs.5,000/-
9.	Loss of Income during treatment (as against Rs.5,000/-)	Rs.6,000/-
10.	Permanent disability as awarded by Hon'ble Tribunal	Rs.15,000/-
11.	Total Non-pecuniary Loss	Rs.48,000/-
12.	Total compensation payable to claimant	Rs.1,01,760/-
13.	Total Compensation	Rs.101760 -Rs.52000 = Rs.49,760/-

10. The appellant is entitled for enhanced compensation of Rs.49,760/- @ 6% p.a. In view of the above, I pass the following order :

ORDER

(a) Appeal is allowed.

- (b) The amount of compensation is enhanced from Rs.52,000/- to Rs.1,01,760/-.
- (c) Appellant is entitle to enhanced amount of Rs.49,760/- @ 6% from the date of filing of claim petition till realisation of the amount.
- (d) Respondents are directed to deposit enhanced amount within four (04) weeks' along-with accrued interest on it.
- (e) Appellant is permitted to withdraw deposited amount.
- (f) Appeal is disposed of in above terms.

[S.G. DIGE, J.]