

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

FIRST APPEAL NO.1168 OF 2006

Gyandeo s/o Motiram Ade,
Age : 42 years, Occu.: Agril.,
R/o.: Kanadi Borgaon (Tanda)
Tq. & Dist. Osmanabad

.... APPELLANT
(Ori. Claimant)

VERSUS

1. United India Insurance Company Ltd.
Through its Branch Manager,
Office, Latur.

2. Govind s/o Baliram Sitole,
Age : Major, Occu.: Driver,
R/o.: Tat Borgaon, Tq. Kaij,
District : Beed

3. Sahebrao @ Bapu s/o Sripatrao More,
Age : Major, Occu.: Agril & Business,
R/o.: Kanadi Borgaon,
presently residing at Murud,
Taluka and District : Latur

... RESPONDENTS
(Ori. Respondent Nos.1 to 3)

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Advocate for Appellant : Mr. B. V. Thombre
Advocate for Respondent No.1 : Mr. V. R. Mundada
Advocate for Respondent Nos.2 & 3 : Mr. P. P. More

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CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 22/11/2022
PRONOUNCED ON : 22/12/2022**

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JUDGMENT :

1. The appellant i.e. original claimant has challenged the judgment and award dated 07/09/2004 passed by Motor Accident Claim Tribunal, Latur (hereinafter referred to as 'the learned Tribunal') in MACP No.142 of 2000 for enhancement of the compensation amount and for not giving proper opportunity to lead further evidence in respect of medical bills.

2. It is not disputed that on 05/06/1999 at about 7.45 p.m. the claimant was riding motorcycle bearing registration No. MCL 8768 towards Tandulja and at that time one tractor alongwith trolley came from opposite direction and gave dash to the motorcycle of the appellant, resulting into an accident. According to the appellant he sustained grievous injuries and consequential disability to the extent of 25% because of the said accident. The learned Tribunal by considering entire evidence on record assessed the compensation of Rs.44,000/- inclusive of NFL amount but deducted 30% from the said amount towards contributory negligence of the appellant himself and finally granted compensation amount of Rs.30,800/- alongwith interest @ 9% p.a. from 11/04/2000 on the unpaid amount of Rs.5,800/- till its realization.

3. The learned counsel for the appellant submits that the learned Tribunal granted meager compensation despite claim of Rs.3,00,000/-. He pointed out that the learned Tribunal did not consider disability of 25% and ignored annual income of the appellant to the tune of Rs.1,00,000/- p.a. from agricultural business. As such, he prayed for enhancement.

4. On the contrary, the learned counsel for respondent No.1 - insurance company strongly opposed the submissions made on behalf of the appellant and supported the judgment of the learned Tribunal.

5. With the help of rival counsel, I have gone through the impugned judgment and the record and proceedings of the original claim petition.

6. It is not in dispute that the offending tractor and trolley were insured with the present respondent No.1 - insurance company at the time of accident. Moreover, the owner and driver, who are the present respondent Nos.2 & 3 had also contended before the learned Tribunal by way of written statement that the appellant was in high speed and dashed upon the trolley of the tractor. The insurance company had also taken same stance before the learned Tribunal. It is significant to note that though the appellant has contended that he was denied an opportunity of adducing evidence in respect of medical bills but the record shows that the appellant in support of his claim had only examined himself and thereafter voluntarily closed the evidence vide pursis Exhibit-45. There is nothing on record to show that the appellant / claimant had sought time to lead further evidence. As such, there is no force in the submission or contention of the appellant that the learned Tribunal denied him an opportunity to lead evidence in respect of medical bills.

7. The main ground of challenge in this appeal is that the learned Tribunal granted the meager compensation of only Rs.30,800/- inclusive of NFL amount of Rs.25,000/- against the

claim of the appellant of Rs.3,00,000/-. However, the record shows that the learned Tribunal has in fact granted the entire amount of medical bills produced on record by the appellant without asking for proof of its contents. Moreover, the learned Tribunal has also granted an amount of Rs.2,000/- additionally for ancillary expenses as the appellant was indoor patient for about 10 days. Not only this but the learned Tribunal has also awarded an amount of Rs.10,000/- on account of pain and suffering, which appears to be proper considering the injuries sustained to the appellant.

8. The learned counsel for the appellant vehemently argued that the appellant being an agriculturist was earning Rs.1,00,000/- per year but due to the accident his working capacity was hampered and he was thereafter started earning Rs.25,000/- per year only. However, though the disability of 25% is admitted, but the disability certificate Exhibit-44 indicates that the said disability was in respect of permanent disfiguration of head only and therefore, it cannot be inferred that it had decreased the working capacity of the appellant since the land under cultivation of the appellant remained as it is. Though the appellant claimed that he sustained fracture to his right leg but injury certificate Exhibit-44 did not disclose the said fact. There was only crush injury to right thigh, which must have recovered by passage of time. Thus, there is no specific medical evidence on record to grant any amount under the head of loss of future income as observed by the Hon'ble Apex Court in the case of ***Raj Kumar vs. Ajay KUMar and another, 2011(1) SCC 343***. It is important to note that the learned Tribunal has already granted an amount of Rs.25,000/- on account of permanent disability by considering the disability certificate on record without asking for evidence of doctor, who issued it. Thus,

it appears that the learned Tribunal has rightly calculated the compensation of Rs.44,000/- by taking into consideration each and every aspect.

9. Further, it is evident that the learned Tribunal has held the appellant responsible for the accident to the extent of 30% on account of contributory negligence. If the spot panchanama Exhibit-42 is perused, then it is evident that the offending tractor and trolley were at extreme left side of the road, which is its proper side. The spot panchanama Exhibit-42 also indicates that part of the tractor was on Kachha road. Thus, it appears to be a head on collision. Though it is contended by the appellant / claimant that the tractor had only left side head light on, therefore, he felt that it was only two wheeler and not four wheeler, but the position of vehicles in spot panchanama indicates that the appellant / claimant has also contributed in the occurrence of the accident. Even though the charge sheet was filed against the driver of tractor and trolley, the ratio of contributory negligence of 30% and 70% held by the learned Tribunal appears proper. Thus, considering all these aspects, it is evident that the learned Tribunal has properly appreciated the evidence on record and rightly determined the amount of compensation. As such, there is no need to interfere with the impugned judgment and award passed by the learned Tribunal and therefore, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)