

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4491 OF 2017

Mahadeo s/o Baburao Gutte
Age 37 years, Occu.Nil,
R/o Village Guttewadi,
Tq. Parli Vaijnath, District Beed. ... APPELLANT

VERSUS

- 1) Chabubai w/o Manik Gutte,
Age major, Occu. Household
R/o Daithana Ghat,
Tq. Parli Vaijnath, District Beed
(Owner of Piaggio Auto Rickshaw)
- 2) The Manager,
I.C.I.C.I. Lombard Insurance Co. Ltd.,
Office at First Floor, Alaknanda Complex,
Near Baba Petrol Pump, Aurangabad
(Insurer of Piaggio Auto Rickshaw)
- 3) Govind s/o Vasant Sanap
Age 31 years, Occu. Driver
R/o Daithana Ghat,
Tq. Parli Vaijnath, District Beed
(Driver of Piaggio Auto Rickshaw) ... RESPONDENTS

.....
Shri Shrimant Mundhe, Advocate for appellant
Shri A.G. Choudhari, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 29th November, 2021.

Date of pronouncing judgment : 8th March, 2022.

J U D G M E N T :

This is an appeal under Section 173 of the Motor Vehicles Act (M.V. Act). The appellant herein was the claimant in Motor Accident Claim Petition No.53/2012. It was a petition for compensation on account of injuries and disability suffered in an accident involving motor vehicle. The Tribunal, on appreciation of the evidence before it, allowed the petition with grant of compensation amounting to Rs.3,86,400/- with interest thereon @ 7% p.a. Feeling to have been inadequately compensated, the present appeal has been filed for enhancement of compensation.

2. The learned counsel for the claimant would submit that, although the claimant suffered 85% of the permanent disability, it resulted him 100% loss of earning capacity. The Tribunal ought not to have deducted one third of the income of the claimant since it was not a death claim. He would further submit that, the evidence would indicate the claimant was 28 years of age. Still, the multiplier was applied considering his age to be 32 years. A lot has been spent on medical expenditure. Nothing has been awarded on that count. The claimant was serving at a monthly pay of Rs.12,000/-. His employer was examined in proof thereof.

The evidence, therefore, ought not to have been discarded. A very meagre amount has been considered towards notional income of the claimant. The learned counsel ultimately urged for substantial enhancement in the amount of compensation.

3. The learned counsel for the respondent Insurance Company would, on the other hand, submit that, it might be a false claim. The Ophthalmologist was not examined in proof of 75% of disability due to eye injury. Dr. Burande specifically stated that the claimant can serve with a grocery shop. No medical bills were placed on record. The amount of compensation awarded by the Tribunal is more than just and reasonable. He, therefore, urged for dismissal of the appeal.

4. The accident took place at 4.00 a.m. on 16/4/2008. The claimant was proceeding on foot. An autorickshaw (No.MH-44-4539) knocked him down and fled. Since neither the owner of the autorickshaw involved in the accident nor its insurer (I.C.I.C.I. Lombard Insurance Co. Ltd.) have taken exception as to finding regarding involvement of the said vehicle and consequently grant of compensation, the said issue thus stood answered finally.

5. the question involved in this appeal is as to whether the compensation awarded by the Tribunal is just and

reasonable one. The break-up of the compensation awarded by the Tribunal is as under :

- | | | |
|-----|---|-----------------|
| (1) | Loss of income & loss of earning capacity | : Rs.3,26,000/- |
| (2) | Loss of amenities in life | : Rs. 20,000/- |
| (3) | Nutritious diet | : Rs. 15,000/- |
| (4) | Pain and sufferings | : Rs. 20,000/- |

The disability certificate Exh.34 reads :

"In my opinion the injury or injuries which he has suffered by reasons of the accident involve C/o RTC with Bill. Eeye injury with sclerocorneal right tear with iris prolapse with Ant. Lens capsular Tear with left operated with 75% blindness (disability issued by Eye board at SRTR i.e. 75% disability) with fracture left IT operated three times with partial ankylosis of left hip and left knee. Fracture with implant removal with malunion with total permanent disability – (eye + limb) = 85%".

"In my opinion the injury or injuries which he has suffered by reasons of the accident involve C/o RTC with Bill. Eeye injury with sclerocorneal right tear with iris prolapse with Ant. Lens capsular Tear with left operated with

75% blindness (disability issued by Eye board at SRTR i.e. 75% disability) with fracture left IT operated three times with partial ankylosis of left hip and left knee. Fracture with implant removal with malunion with total permanent disability – (eye + limb) = 85%”.

6. In proof of disability certificate, Dr. Burande, Orthopaedic Surgeon with Medical College, Ambajogai was examined. In his cross-examination, he testified that the certificate issued by him was of 10% disability. He was unable to tell about the certificate issued by Ophthalmologist. In his opinion, the patient can do his normal duty. He can work in grocery shop as well.

7. The Ophthalmologist who has examined the claimant and issued him disability certificate has not been examined. For want of there being any contra evidence, this Court proposes to rely on the disability certificate suggesting the claimant to have suffered 85% disability.

8. It was the case of the claimant that he was serving as a Salesman with a grocery shop owned by one Dattatraya. It is also his case that, he was paid salary of Rs.12,000/- per month. The shop owner was examined as a witness. He did not place on record documentary evidence in

proof of quantum of salary paid to the claimant. It is in his evidence that, population of the village was 3000. There were seven grocery shops in the village. He did not place on record his Shop Act licence. According to him, the of profit was not more than 5% of the total turnover. In view of this evidence, the Tribunal was justified in not believing the claimant's case that he would get monthly salary of Rs.12,000/-. It is also in his evidence the claimant owns 8 ½ acres of agricultural land. The accident took place way back in March 2012. It is just difficult to believe that in those days the rate of daily wage was Rs.400/-. The petitioner has studied up to 7th Standard only. The Tribunal was, therefore, justified in considering the petitioner's income notionally at Rs.3000/- per month. In the caption of the claim petition itself, the petitioner gave his age as 32 years. In his statement on oath as well he reiterated the same. The Tribunal has, therefore, rightly applied the multiplier applicable to age of 32 years. The Tribunal has deducted one third of the annual income of the claimant towards his personal expenses. It is not a case of death claim or loss of total earning capacity. The amount of compensation, therefore, on account of loss of future earning is to be worked out as under :

Annual income Rs.3000 x 12 = Rs.36,000/-. 85%

thereof comes to Rs.30,600/-. Applying multiplier of 16 the total annual income of the claimant comes to Rs.4,89,600/- (Rs.30,600 x 16).

9. True, the record indicates the petitioner was an indoor patient for little over one month in J.J. Hospital at Mumbai. He has, however, not placed on record a single bill in proof of medical expenditure incurred by him. Still, assuming him to have spent something for medical treatment, a sum of Rs.50,000/- is awarded towards medical expenditure.

10. The claimant has been certified to be able to work as a Salesman in a grocery shop. He has his own agricultural land as well. The Ophthalmologist has not been examined. This Court has, therefore, no benefit to ascertain whether in fact the percentage of disability rendered the claimant to suffer loss of earning capacity of equal percentage. The evidence on record is other way round. This Court is, therefore, not inclined to grant more compensation under other heads.

11. In the result, the appeal partly succeeds. Hence the order :

ORDER

- (i) The First Appeal is partly allowed.
- (ii) The compensation is enhanced from Rs.3,86,400/- to Rs.5,39,000/-.
- (iii) Rest of the terms of the impugned award to stand unaltered.

**(R. G. AVACHAT)
JUDGE**

fmp/-