

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

FIRST APPEAL NO. 234 of 2016

HDFC ERGO General Insurance Co. Ltd. .. Appellant
Office of Ramon House, H.T. Parekh Marg, [original
169, Backbay Reclamation, Res.No.2]
Mumbai – 400 020.
Through its Divisional Manager/
Authorized Signatory,
Adalat Road, Aurangabad.

Versus

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| 1. Deepaksing @ Lakhansing Surjitsing @ ..
Mukundasing Panjabi,
Age.36 years, Occ. Driver,
At present R/o. Balaka Shantinagar,
Haridpur Barasat, Calcutta. | Respondents
[Res.No.1 -
Original
claimant &
Res.No.2 -
Ori. Res.
No.1] |
| 2. Samsuddin Usman Shaikh
Age.Major, Occ. Business,
R/o. Plot No.152, Ward 11/A,
Gandhidham,
Gujarat State. | |

Mr.Mohit R. Deshmukh, Advocate for the appellant.
Mr.S.T.Kazi h/f. Mr.G.A.Nagori, Advocate for respondent
No.1.
None for respondent No.2.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	09.10.2023
PRONOUNCED ON	:	29.11.2023

J U D G M E N T :-

01. This appeal is filed by the insurance company challenging judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Jalgaon dated 29.08.2015 in MACP No. 88 of 2012. The learned Member by the impugned judgment and order has awarded Rs.16,84,800/- towards compensation, Rs.30,000/- towards medical treatment and diet and Rs.50,000/- for artificial leg. Thus, total amount awarded is Rs.17,64,800/-.

02. Respondent No.1 is the claimant, who suffered injury in an accident and lost his leg. He, therefore, had lodged a claim.

03. The facts in short are that the claimant/injured was working as a truck driver. On 07.10.2010 he was proceeding in a truck bearing No.WB-23-BO-753 from Dhule to Jalgaon, from opposite side a trailer bearing No.GJ-12-W-5823 gave dash to his truck. The case was of head on

collision. In the said accident, the injured received injury to his left leg. His left leg is required to be amputated from knee. It is case of the claimant that the driver of the trailer was responsible for the accident. Said trailer was insured by the present appellant/ insurance company. Due to the injury the claimant lost 100% earning capacity. His age was 33 years at the time of accident. It is his further case that he was earning Rs.11,500/- per month including Bhatta. He also claimed Rs.3 lakhs for artificial leg. He was required to spend Rs.30,000/- for medical treatment and dressing. He was under treatment for 15 days.

04. Before the Tribunal, respondent No.1/owner of the vehicle did not appear. The claim was resisted only by the present appellant/original respondent No.2.

05. On assessing the evidence, documents on record and police papers, the learned Member of the Tribunal held that the accident took place because of negligence

on the part of driver of the traylor. The age of the claimant was 33 years at the time of the accident and therefore multiplier of 16 is applied. The defence of the insurance company that there was contributory negligence was not accepted. Even the Doctor who treated the claimant was examined. There is a certificate issued by the Civil Hospital on record showing that the disability of the claimant is to the extent of 75%. It is further considered that the Doctor has specifically deposed that the claimant would not be in a position to do the work that he was doing prior to the accident.

06. Present appeal is preferred on the ground that there was contributory negligence and about quantum of compensation.

07. The learned Advocate for the appellant Mr. Deshmukh vehemently argued that it is clear from the panchanama and other documents that it was a head on collusion accident that took place at the center of the

road. Both the vehicles suffered damage from front side. This clearly shows that it is a case of contributory negligence. About quantum of compensation, he submits that the learned Member has wrongly arrived at a conclusion that the income of the claimant was Rs.1,40,400/- per year. It is wrongly held that the claimant was resident of Howrah, State of West Bengal. His earning could not have been taken as Rs.4000/- in the year 2012. He, thus, submits that the learned Member of the Tribunal has wrongly held the claimant to be entitled to receive compensation. In the alternative he submits that the learned Tribunal has not properly considered the quantum of compensation and has granted excessive amount. Learned Advocate Mr. Deshmukh submits that Bhatta paid to driver cannot be considered as income from salary. As per the pleading, therefore, the salary needs to be taken only as Rs.7000/-. There is no evidence of expenses towards artificial leg and pain and suffering. The Court has wrongly taken the loss of earning capacity to the extent of 100%. In support of his submission, the learned

Advocate for the appellant relied upon judgment in the case of New India Assurance Co. Ltd. Vs. N. Senjilaxmi wd/o. Late K. Natrajan and ors. reported in 2013(1) Mh.L.J.778.

08. Mrs. Kazi, learned Advocate for respondent No.1 submits that there were three vehicles involved in the accident. From the papers, it is seen that the cleaner of the third vehicle bearing No. GJ-2-Z-0654 lodged FIR with the police station. The said cleaner was eye witness to the incident. From the panchanama, she submits that it is seen that there was heavy damage received to the vehicle which was driven by the claimant. Looking to the panchanama, she submits that the Truck bearing No. GJ-12-W-5823 was overtaking other vehicle when the claimant was coming from the opposite direction. Therefore, it cannot be said to be a case of contributory negligence. She relied upon judgment in the case of Sidram Vs. Divisional Manager, United India Insurance Co. Ltd. Reported in (2023)3 SCC 439. She submits that in this case in-fact

the learned Member ought to have granted compensation towards pain and sufferings. However, same is not granted. Since the claimant has lost one leg now he cannot do the job of driver.

09. On the point of contributory negligence, this Court has seen Exh.24 – spot panchanama. From the spot panchanama, it is seen that three vehicles were involved in the accident. Panchanama records that it was observed that it was the trailor which gave dash to the truck driven by the claimant. The finding, therefore, recorded by the learned Member does not appear to be perverse or incorrect. The FIR lodged by the cleaner of the third vehicle, namely, Peladji Sardarji Thakur at Exh.22 also shows that the trailor bearing No. GJ-12-W-5823 was ahead of his vehicle, which gave dash to the truck of the claimant. In the accident the claimant got trapped in the steering in the cabin of his truck. He had received injury to his leg and he was shouting for help.

10. Looking to the above material, this Court finds that the learned Tribunal has rightly appreciated the evidence and recorded conclusion that it was the driver of trailor, who was responsible for the accident and there was no case of contributory negligence. So far as quantum is concerned, this Court finds that the learned Member has considered that the salary of Rs.7000/- was being paid to the claimant. He was also receiving Rs.150/- per day towards Bhatta. Though there is no documentary evidence of the salary, the learned Tribunal has considered his income as Rs.7000/- per month and Bhatta @ Rs.100/- per day. It is further recorded that the claimant must be getting Bhatta for 15 to 20 days in a month and has thus taken monthly income of Rs.9000/-. This Court finds that looking to the age, the multiplier of 16 is rightly applied considering loss of income of 75%. This Court does not find any reason to interfere with the said finding and reasoning.

11. In the judgment in the case of N.Senjilaxmi

(Supra), this Court at Nagpur Bench had held that when there is collision of two trucks and no additional premium was paid towards the risk of the owner and/or driver of the vehicle. In that view, it was held that the insurance company was not liable to pay the compensation. The learned Tribunal in that case had recorded conclusion that both the vehicles were equally responsible to the accident and said finding was not disturbed. The learned Tribunal had further held that by taking earning of the claimant as Rs.3000/-, 1/3rd of the said amount was deducted towards personal expenses. In the said case the accident had taken place on 25.12.1989. Considering that the learned Tribunal had considered income of Rs.3000/- per month in 1989. This Court finds that in the present case the learned Tribunal has taken income to be Rs.9000/- per month and the same cannot be said to be exorbitant, considering the date of accident which is 07.10.2010. Though now it is well settled that future prospects are required to be considered the same is not granted by the learned Tribunal.

12. In the case of Sidram (Supra), the Hon'ble Apex Court has considered as to what is "just compensation". The Hon'ble Apex Court considered that once it is proved that the victim/injured has been employed at some venture, the necessary corollary is that he would be earning an income. On future prospects it is observed that now it is well settled position that in case of permanent disablement incurred as a result of motor accident, the claimant can seek apart from compensation for future loss of income, amounts for future prospects as well. Thus, it is held that even in the case of permanent disablement, the Tribunal needs to consider the loss of future earning capacity. The Hon'ble Apex Court has also considered that the damages are required to be paid for pain and sufferings as a consequence of injury.

13. Considering the above judgments, this Court finds that the learned Tribunal has rightly granted just compensation. As already observed, this Court does not

find any perversity in the findings recorded by the learned Member of the Tribunal on the aspect of negligence of the vehicle. This Court finds that no interference is called for even in the order awarding compensation. There is no merit in the appeal. The appeal, therefore, deserves to be dismissed. Hence, following order :-

ORDER

- (i) The First Appeal stands dismissed with no order as to costs.

[KISHORE C. SANT,J.]