

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

FIRST APPEAL NO. 3490 OF 2016

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| 1. Rajendra s/o. Yadav Nikam
Age. 40 years, Occ. Service,
Represented through his wife | .. | Appellants
[original
claimant] |
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| 2. Sangita w/o. Rajendra Nikam
Age. 35 years, Occ. Housewife,

R/o. Ukkadgaon, Tal. Kopargaon,
Dist. Ahmednagar. | | |

Versus

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| 1. Sunil s/o. Ramdas Sonwane
Age. Major, Occ. Business,
R/o. Shirasgaon Lauky, Tq. Yeola,
Dist. Nashik. | .. | Respondents
[original
respondents] |
| | | |
| 2. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch Office at Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar. | | |

Mr. Arvind R. Kawade, Advocate for the appellants.
Mr. M.K. Goyanka, Advocate for respondent No.2.

CORAM	:	KISHORE C. SANT, J.
DATED	:	29.08.2023

JUDGMENT :-

01. Present appeal is filed by original injured claimant against award

passed by the learned Member, Motor Accidents Claims Tribunal, Kopargaon in MACP No.65 of 2010 only to the extent of non-passing of award as prayed for and awarding amount of Rs.4,58,200/- towards full and final compensation including Rs.25,000/- towards No Fault Liability along with interest on the balance amount at the rate of 8% per annum from the date of filing the petition i.e. from 06.09.2010 till the date of final payment.

02. The appeal is filed on limited ground, therefore, no detailed facts are necessary to be discussed. In short, the facts are that the claimant was riding on his motorcycle on 11.05.2010 to Kopargaon by Vaijapur-Kopargaon road. On the road near Navhari Parjane Vasti one vehicle, namely, Tata Magic bearing No. MH-15-TC-37 came from opposite direction in a high speed and gave dash to the motorcycle of the claimant. The claimant received multiple injuries and fracture injury to his head and other parts parts of body and suffered permanent disability. Initially he was admitted in Saibaba Hospital at Shirdi from 11.05.2010 to 12.05.2010. Thereafter, he was shifted to Sai Shradha Hospital at Nashik, where he was admitted from 13.05.2010 to 01.06.2010. He was again required to be admitted in Ramkrishna Hospital at Nashik for some time in the month of November, 2011. Because of this he

filed claim petition and prayed for compensation of Rs.34,05,000/- and Rs.25,000/- under No Fault Liability along with interest. He calculated his annual income as Rs.1,80,000/-. Claiming permanent disability to the extent of 70%, the claimant claimed Rs.30,60,000/- towards future prospects, Rs.,2,45,000/- towards medical expenses, Rs.50,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities.

03. It is admitted fact that the claimant is working as an Instructor in Industrial Training Institute (ITI) run by the Government. He is still in service and because of the accident his service conditions are not affected neither his earning capacity is reduced because of the accident.

04. The learned Member of the Tribunal considered the medical certificate (Exh.54) whereby it is certified that the claimant has suffered permanent disability to the extent of 50%. The learned Member has considered all the aspects and awarded total amount of compensation of Rs.4,58,200/- by calculating medical expenses as Rs.2,66,200/- and Rs.1,92,000/- is awarded towards loss of earning capacity and Rs.25,000/- towards No Fault Liability.

05. The learned Advocate for the claimant vehemently argued that the learned Member has not considered the evidence properly. Though the certificate shows that the claimant has suffered 50% permanent disability, still no adequate compensation is awarded. The medical expenses of the claimant were Rs.3,51,700/-, however, only amount towards medical expenses is considered be Rs.2,66,200/-. For pain and suffering the learned Member ought to have granted Rs.50,000/-, but by not awarding the same, the learned Member has committed mistake.

06. On the above facts, the learned Advocate for respondent No.2 Mr. Goyanka vehemently opposes the appeal. He submits that the claimant is in service and that is an admitted fact. Because of the accident his service conditions are not adversely affected. There is nothing to show that there is loss of future earning. On the count of pain and suffering the Court has rightly considered this aspect and granted Rs.20,000/-, which is in-fact more than what claimant would have received in normal course. In normal course for pain the suffering in such case the amount ought to have been Rs.15,000/- only. He submits that though there is no loss of future earning, the Tribunal

has granted amount of Rs.1,92,000/-.

07. On considering the above aspects, this Court has to see as to whether there is loss of future earning and as to whether the appellant is entitled to receive more amount towards pain and sufferings and towards disability. This Court finds that the claimant is in service in ITI. He is retained in service. There is nothing to indicate that because of the accident his earning capacity is reduced as he is receiving regular salary. There is also no case made out that in future the claimant will not get any promotion on the ground of disability. Though it is proved that the claimant has suffered disability to the extent of 50%, still he could not show loss of earning.

08. The next head of compensation remained to be seen is the head of medical treatment. This Court finds that the claimant has produced on record evidence/bills to show that he is required to spend Rs.3,51,700/- for his treatment. The Tribunal has, however, considered the same only to be Rs.2,66,200/-. On this head, certainly amount can be enhanced to Rs.3,51,700/-. The Tribunal has not granted dietary allowance, which is quantified at Rs.15,000/-. It is seen that though amount of Rs.20,000/- is

granted towards pain and suffering, it is not actually calculated and added in the award. The award has been passed only for amount of Rs.4,58,200/- which ought to have been Rs.4,78,200/- as per calculations of the Tribunal. The amount of Rs.20,000/- granted towards pain and suffering also appears to be inadequate. It needs to be considered that the claimant has suffered permanent disability to the extent of 50%, it should be Rs.50,000/-.

09. This Court, thus, finds that the award needs to be modified by awarding Rs.50,000/- towards pain and suffering since he has suffered permanent disability of 50%, Rs.15,000/- towards dietary allowance, an amount of Rs.3,51,700/- towards medical treatment and Rs.1,92,000/- towards loss of future earning. Thus, the award is modified and the amount awarded is Rs.6,08,700/-. (Rupees Six Lakhs Eight Thousand Seven Hundred Only). The claimant shall be entitled to receive balance amount, which is not yet paid to him. Therefore, respondent Nos. 1 and 2 are directed to pay jointly and severally the balance amount of modified award, which is not yet paid to the claimant along with interest @ 8% per annum from the date of claim petition i.e. from 06.09.2018 till the date of final payment.

10. With this, the first appeal stands disposed off.

[KISHORE C. SANT, J.]