

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.341 OF 2018**

Reliance General Insurance Company
Through its Manager
R/o Reliance General Insurance Company,
ABC complex Adalat Road,
Aurangabad

**... Appellant
[Orig. Opp. No.2]**

Versus

1. Madhav s/o Satwaji Mutnepwad
Age: 18 yrs., Occ. Nil
R/o: Halda, Tq. Bhokar, Dist. Nanded

... Orig. Claimant

2. Satwaji s/o Lalu Mutnepwad (died)
Through his legal heir
Smt. Kamalbai w/o Satwaji Mutnepwad,
Age: 37 yrs., Occ. Household,
R/o: Halda, Tq. Bhokar, Dist. Nanded

**... Respondents
[Orig. Opponent No.1]**

...

Mr. Swapnil Patil h/f Mr. R. H. Dahat, Advocate for Appellant
Mr. S. V. Suryawanshi, Advocate for Respondent No.1

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18.07.2023

PRONOUNCED ON : 26.07.2023

JUDGMENT :

1. The appellant / original respondent no.2 – insurance company impugns the judgment and award dated 09/05/2017, passed by the Motor Accident

Claims Tribunal at Bhokar, District Nanded [for short 'the Tribunal'], in Motor Accident Claim Petition (MACP) No.37/2012 by this appeal filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The respondent no.1 [original claimant] had approached the Tribunal under Section 166 of the Act seeking compensation of Rs.3,00,000/- from the owner and insurer of the auto rickshaw bearing registration No. MH-26-T-5868. The claimant contends that he suffered injuries in an accident that has been caused owing to rash and negligent driving of the rickshaw driver. According to the claimant, he suffered permanent disablement due to the injuries caused in the accident.

3. The claim petition was contested by the respondents. The appellant insurer [original respondent no.2] filed a written statement contending that the driver of auto rickshaw was not holding valid driving licence, hence, there is a breach of condition of the policy. The Tribunal framed the issues on the basis of pleading of the parties. The claimant recorded his own evidence and relied upon the documentary evidence. A disability certificate is placed on record at Exhibit-43, which has been issued by Medical Board constituted at the Government Medical College and S.G.G.M Hospital, Nanded, that certifies, the claimant has suffered 42% permanent disablement. The Tribunal after considering the record and hearing the

parties, allowed the claim petition directing respondent nos.1 and 2 to jointly and severally pay compensation of Rs.7,02,209/- along with interest @ 9% p.a. from the date of registration of the petition.

4. Mr. Patil, learned Advocate appearing for the appellant would submit that the Tribunal failed to consider statutory defence of driving license specifically raised on behalf of the insurer. He would submit that the driver of auto rickshaw was not authorized to drive three-wheeler. He would further submit that the Tribunal granted excessive compensation. The claimant was merely 16 years of age at the time of accident however his notional income is considered @ Rs.4000/- per month for assessment of future loss of earning. He would further submit that the Tribunal granted excessive interest @ 9% per annum.

5. Mr. Suryawanshi, learned Advocate appearing for respondent no.1 supports the award. He submits that the claimant has suffered 42% permanent disablement. He points out that although the Tribunal has considered notional income @ Rs.4000/- per month, nothing added towards future prospects in the estimated income. The amount of Rs.2,00,000/- has been granted separately on that count. He would submit that in cases of permanent disablement, compensation is admissible for the pecuniary and non-pecuniary losses. Therefore, the compensation towards pain and sufferings, mental torture, loss of amenities in life etc. needs to be assessed.

The Tribunal has granted consolidated amount of Rs.1,00,000/- for that purpose apart from Rs.30,000/- towards transportation and attendance charges. Therefore, he submits that the Tribunal has passed just award.

6. Having considered the submissions advanced by the respective Advocates appearing for the parties, it is apparent that there is no dispute that the claimant has suffered accidental injuries resulting into permanent disablement. The Exhibit-43 is a disability certificate issued by the Medical Board constituted at the Government Medical College and S.G.G.M. Hospital, Nanded for orthopedically handicapped person. Although the Author of the said certificate is not examined, it cannot be doubted since issued by duly constituted Medical Board at the Government Medical College. Further no evidence is brought on record that would dislodge authenticity of certificate. The claimant was student aged about 16 years at the time of accident. He was initially admitted to S.G.G.S. Hospital at Nanded from 21/04/2010 to 24/04/2010 then he was shifted to Sir J. J. Hospital at Mumbai where he was treated from 24/04/2010 to 07/07/2010. The multiple surgeries are performed and the implants are also inserted in his body. In spite of long-drawn medical treatment, he suffered permanent disablement.

7. Considering the nature of disability suffered by the claimant, it is difficult to accede with contention of the appellant that the assessment of

compensation is excessive and exorbitant. It is trite that the Tribunal has to grant just compensation estimating the actual loss of future earning as well as notional losses towards pain and sufferings, agony, loss of amenities in life and mental stress.

8. In the matter of **R. D. Hattangadi Vs. Pest Control (India) Pvt. Ltd.** reported in **(1995) 1 SCC 551**, the Supreme Court of India laid down various heads for grant of compensation in the injury claims. Considering the principles of law espoused, the compensation granted towards non-pecuniary heads cannot be assailed being excessive and exorbitant. The Tribunal has considered notional income @ Rs.4000/- per month and assessed future loss of earning by applying multiplier method. Now it is settled that even in injury cases, the compensation has to be assessed by applying multiplier method. Similarly, the assessment of compensation shall include future prospects. In the present case, the Tribunal has granted Rs.2,00,000/- towards loss of future prospects although such losses are not considered while assessing compensation by applying multiplier method. However, if the assessment of compensation is scaled by applying various heads, the required to be considered in injury cases, It appears that the just compensation is awarded. In that view of the matter, there is no scope to interfere in the award on the point of quantum.

9. The second contention raised on behalf of the appellant is that the

issue of driving licence is not correctly decided. Admittedly, the driving licence on record shows that the driver was authorized to drive light motor vehicle. The issue as to whether the person holding driving licence for light motor vehicle can drive the transport vehicle, If the vehicle otherwise falls within the definition of light motor vehicle has been considered by the Supreme Court in the case of **Kulwantsing and Others Vs. Oriental Insurance Company Ltd.** reported in **2014 (4), TAC 676 (SC)**. It is held that the driver possessing licence for light motor vehicle is entitled to drive any vehicle having gross vehicle weight up to 7500 kgs. The Tribunal has rightly applied the ratio laid down in case Kulwantsing and Others Vs. Oriental Insurance Company Ltd. (*Supra*) and recorded finding that the insurer failed to establish its defence on the point of driving licence. This Court do not find any error in the approach of the Tribunal. Therefore, the contentions raised by the appellant on this point do not hold water.

10. Mr. Patil, learned Advocate appearing for the appellant further contends that in fact, the father of the claimant was driving the auto rickshaw at the relevant time and he was at fault. The claimant would not be entitled to raise the claim against his father. This contention also requires to be rejected for the reason that the claimant was third party and he suffered injuries on account of use of the vehicle. Although his father was negligent or responsible for the cause of accident, the entitlement of the claimant

cannot be negated only because his father was driver of offending vehicle. Upshot of aforesaid the appeal is dismissed. The amount, if any, deposited by the appellant be disbursed to the claimant.

(S. G. CHAPALGAONKAR, J.)

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