IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1858 OF 2019

Deorao S/o Tukaram Phalke
Age: 48 years, Occu.: Nil,
R/o. Umri (Jahagir), Tq. Hadgaon,
Dist. Nanded. … Appellant
(Orig. Claimant)

Versus

1. The Divisional Manager,
United India Insurance Co. Ltd.,
Guru Complex G.G. Road,
Nanded.

2. Pradeep S/o Kerbarao Dubewar,
Age: 60 years, Occu.: Business,
R/o. Talni, Tq. Hadgaon,
Dist. Nanded. … Respondents
(Orig. Respondents)

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Mr. Ravindra V. Gore, Advocate for Appellant
Mr. A.S. Usmanpurkar, Advocate for Respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 02nd SEPTEMBER, 2024

ORAL JUDGMENT :

1. This appeal filed under section 173 of the Motor Vehicles Act by the claimant, challenges the judgment and award dated 28.11.2016 passed by the Motor Accident Claims Tribunal, Nanded in M.A.C.P. No.727/2008.

2. Appellant/claimant is a driver of auto rickshaw and was driving his auto rickshaw No. MH-26/B-6318 on 09.08.2008 from Umerkhed to Hadgaon. At about 6.00 a.m. to 6.30 a.m., when the rickshaw reached near Gojegaon, one luxury bus No. MH-26/B-146 came from opposite side, i.e. Hadgaon side in high speed and gave dash to the auto rickshaw. Due to the dash, claimant received severe injuries and multiple fractures. He, therefore, filed claim petition for compensation of Rs.25,00,000/- contending that he has suffered 50% permanent disability and is unable to drive auto rickshaw in future.

3. Respondent No.1/insurance company opposed the claim by filing written statement and denied all the contentions. It is contended that the offending vehicle committed breach of insurance policy, and therefore, the insurance company is not liable to pay compensation. Respondent No.2/owner of the offending vehicle also filed written statement and opposed the claim.

4. Tribunal after recording evidence and hearing parties, partly allowed the claim and awarded compensation of Rs.4,89,283/- along with interest @ 7.5% p.a. Claimant is

aggrieved by inadequate compensation awarded by the Tribunal.

5. Heard learned advocate for appellant/claimant and learned advocate for respondent no.1/insurance company. None for respondent no.2. Perused the record.

6. Learned advocate for claimant assailed the quantum of compensation awarded by the Tribunal contending that the Tribunal ought to have assessed the notional income of claimant at Rs.8,000/- p.m. as the claimant being rickshaw driver is a skilled worker. He submits that the Tribunal has not awarded any compensation under the head future loss of income and has not awarded any damages under non-pecuniary heads. Therefore, he submits that the Tribunal has failed to award just and fair compensation, and hence, claimant is entitled for enhanced compensation.

7. Per contra, learned advocate for insurance company has supported the impugned judgment and award contending that claimant has failed to prove on record that he has suffered permanent disability. The Tribunal has in fact wrongly appreciated the evidence of medical officers and has erred in holding that claimant has suffered 50% disability. He submits

that considering the material brought on record by claimant, the Tribunal has rightly assessed the notional income of claimant at Rs.5,000/- per month and has awarded adequate compensation, which is not liable to be interfered.

8. Perusal of record shows that in support of the claim, claimant has examined Dr. Jadhav (PW-2), Neuro Surgeon, Yeshoda Hospital, Nanded, who treated the claimant at Yashoda Hospital during the period from 09.08.2008 to 28.08.2008. According to Dr. Jadhav, claimant has suffered following injuries in the accident:-

(1) CLW over forehead 5 cm X 1 Cm. Verticle

(2) CLW over left forehead 3 m X 1 cm. Verticle

(3) Degloving injury on left cheek 3 cm. X 3 cm.

(4) CLW over nose 3 cm X 5 cm. Verticle

(5) CLW over right side of chin 7 cm X 0.5 cm.

(6) Left clavicle fracture

(7) Abrasion over left clavicular region 5 cm X 5 cm.

(8) Abrasion over fight lower chest anteriorly adm. 15 cm X 3 cm. Horizontally.

(9) Fracture right medical condyle tibita with gross displaced fracture fragments are noted and old fracture mid shaft tibia fibula.

(10) CT scan brain suggestive cerebral contusion left frontal region with post traumatic sub-archnoid hemorrhage.

In cross-examination, he has admitted that injuries No. 1 to 5, 7 and 8 are simple in nature and at the time of discharge claimant had recovered from all the injuries, except weakness in upper limb, it takes about 5-6 months period for recovery from weakness. He has also admitted that he takes six months to determine whether there is any permanent disability or not. He admitted that at the time of discharge, the patient was recovered from head injury. He has not issued any disability certificate to claimant.

9. Dr. Vitthal Paratwagh (PW-3) a Medical Officer of PHC Wadgaon, has issued disability certificate (Exhibit-51) stating that claimant has suffered 50% disability. In cross-examination, he has admitted that he has completed graduation in B.A.M.S. (Ayurvedic) and Master of Surgery (Ayurvedic). He is not having any degree in Orthopaedics. He has issued disability certificate to the claimant within 41 days of the accident.

10. Claimant has also relied on disability certificate (Exhibit-60) issued by the Handicap Board of G.M.C. and S.G.G.S. Hospital, Nanded, which is signed by the board comprising of three persons including Chairperson/Medical

Superintendent showing that claimant has suffered 42% disability. Relying on this evidence, the Tribunal has assessed permanent disability of claimant at 50%, which cannot be faulted with.

11. Tribunal has held notional income of the claimant at Rs.5,000/- per month. Claimant has right in submitting that in view of notification published by Ministry of Labour and Employment under section 4(1B) of Employee's Compensation Act, 1923, in Gazette of India on 31.05.2010, in which Central Government has specified minimum monthly wages of unskilled workers at Rs.8,000/- per month. In view of this circular, the Tribunal ought to have assessed monthly income of claimant at least Rs.8,000/- per month. Though respondent No.1/insurance company has strongly opposed this argument contending that this contention was not raised before the Tribunal and it is raised for the first time in the appeal and therefore it should not be considered, there is no merit in this submission as it is well settled that beneficial or welfare statutes should be given a liberal and not literal or strict interpretation. Appeal is continuation of the proceedings and in the light of decision of the Apex Court in ***Nagamma and Anr Vs. United India Insurance Co. Ltd., AIR 2009 SC 3056***

and ***Nagappa Vs. Gurudayal Singh and others, AIR 2003 SC 674***, this Court is duty bound to award just and fair compensation to the claimant. In this view of the matter, a judicial notice can be taken of the circular issued by the Central Government, specifying the minimum wages of unskilled labour at Rs.8,000/- per month. Hence, the notional income of claimant needs to be assessed at Rs.8,000/- per month. Since the claimant was indoor patient for ten days and has suffered two fractures, for pain suffering, the claimant is entitled for compensation of Rs.50,000/-.

12. There is no merit in the contention of claimant that the Tribunal has not awarded compensation under the head future loss of income. As is rightly pointed out by the learned advocate for insurance company that in cross-examination the claimant has admitted that he has applied for renewal of his driving licence. In that view of the matter, it cannot be said that there was any loss of future income of claimant and that supported the contention of insurance company that claimant has not suffered any loss of future income. The Tribunal, therefore is right in not awarding the compensation under this head.

13. In view of the aforestated discussion, claimant is entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. Rs.8,000 X 12 = Rs.96,000) 50% Deduction from Annual Income towards 50% disability (i.e. Rs. 96,000 – Rs.48,000/- = 48,000/-)	Rs. 48,000/-
2.	Annual dependency multiplied by multiplier (48,000 x 15)	Rs.7,20,000/-
3.	Hospital Bill granted by Tribunal = Rs.30,700/- Medical Bill granted by Tribunal = Rs. 8,583/-	Rs. 39,283/-
7.	Total compensation needs to be awarded	**Rs. 7,59,283/-**
8.	Compensation awarded by the Tribunal	**Rs.4,89,283/-**
9.	**Enhanced compensation** (Rs.7,59,283 – Rs.4,89,283/- = Rs.2,70,000/-)	**Rs.2,70,000/-**

14. In the result, following order:-

ORDER

(i) Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 28.11.2016, passed by District Judge-3 and Ex-Officio Member of M.A.C.T., Nanded in M.A.C.P. No.727 of 2008 is modified and claimant is held entitled for enhanced compensation of Rs.2,70,000/- to be paid by respondents No.1 and 2 jointly and severally within 12 weeks from the date of uploading of this judgment.

(iii) The insurance company shall deposit the enhanced compensation along with accrued interest @ 7.5 per annum on the enhanced compensation from the date of filing of claim petition till realization.

(iv) Modified award be prepared accordingly.

(v) Claimants to pay court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI]
JUDGE