



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2677 OF 2016

Jawahar s/o Hukumchand Pawar,
Age 50 yrs, Occ. Service,
R/o. R-27/166, Cidco, N-9,
Pratapgad Nagar, Aurangabad.

Appellant.
(Orig. claimant)

Versus

1. Kalimuddin S/o. Vajiruddin Shaikh,
age 50 yrs, Occ. Business,
R/o. Owner and Driver,
R/o Bedkaligalli, Khultabad,
Dist. Aurangabad.

2. Divisional Manager,
National Assurance Company Ltd.,
Hajari Building, Station Road,
Aurangabad.

Respondents.

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Advocate for the Petitioner : Mr. P. B. Kakade
Respondent No.1 – Served.

Advocate for Respondent 2 : Mr. S.V. Kulkarni

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : April 18, 2024

Pronounced on : May 06, 2024

JUDGMENT :-

1. The appellant/original claimant aggrieved by the assessment of compensation under award dated 28.3.2016 , passed by Tribunal, at Aurangabad, in M.A.C.P. No.461 of 2013, filed this appeal u/s 173 of the Motor Vehicles Act, claiming enhanced compensation.

2. Mr. Kakade, learned advocate appearing for the appellant/claimant submits that the claimant suffered permanent disablement as a result of injuries suffered in motor-vehicular accident dated 1.6.2013, caused due to rash and negligent driving of the offending jeep. He was hospitalized during the period from 1.6.2013 to 17.6.2013. He was operated for the injuries on right thigh. He suffered 35% permanent disablement. However, Tribunal did not assess compensation towards future loss of earning by applying multiplier method. He would submit that Award of the compensation towards non-pecuniary heads is also inadequate and requires to be modified.

3. In support of his contentions, he places his reliance on the judgment of the Supreme Court in case of **Raj Kumar Vs. Ajay Kumar and another Reported in 2011 (1) ALL MR 402 (SC)**, **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited reported in (2014) 2 Supreme Court Cases 735** and **Dadu Prakash Shinde Vs. BalwanSingh and another reported in 2023 (4)ALL MR 584**.

4. Per contra, Mr. S.V. Kulkarni, learned counsel appearing for respondent no.2-insurer submits that claimant continued in service even after the accident. There is no reduction in pay and perks owing to accidental injuries. The Tribunal has rightly assessed the compensation towards non-pecuniary losses.

5. In support of his contentions, he relies upon the judgment in case of **New India Assurance Company Ltd. Vs.**

Satish Chandra Sharma and another reported in 2022 ACJ 1211.

6. Having considered the submissions advanced and on perusal of the record tendered into service, it is not in dispute that claimant suffered 35% disablement owing to accidental injuries. However, the claimant continued with service. Therefore, he has not suffered loss of earning. The Tribunal declined to grant compensation towards future loss of earning. However, assessment of compensation is made towards medical expenses, conveyance charges and Rs.35,000/- awarded towards permanent disablement.

7. Now, it is settled position of law that permanent disability is an independent head and compensation needs to be assessed for that purpose. In this case, Tribunal declined to assess the compensation applying multiplier method towards future loss of earning, while restricting award of Rs.35,000/- only towards permanent disablement. Admittedly, the claimant was in service as a teacher. He must be suffering lot of inconvenience because of permanent disability. Looking to the nature of Job he was doing coupled with nature of permanent disablement he suffered, Tribunal ought to have granted him at least Rs.1.00 Lakh on count of permanent disability apart from the compensation on other heads. Claimant needs to be compensated independently towards pain and sufferings. The amount of Rs.35,000/- can be awarded for that purpose. There is no reason to re-visit the award of compensation under different heads specified in the impugned judgment of the Tribunal. Therefore, compensation amount

needs to be enhanced by Rs.1.00 Lakh. As such the appeal deserves to be partly allowed. Resultantly, following order is passed.

ORDER

- i. First appeal is partly allowed.
- ii. The judgment and award passed by the M.A.C.T. Aurangabad in M.A.C.P. No.461 of 2013 dated 28.3.2016 is modified.
- iii. The respondents nos.1 and 2 shall jointly and severally pay total compensation of Rs.4,36,388/- (Rs. Four Lakh Thirty Six Thousand, Three hundred and eighty eight only) to the claimant alongwith interest @ 9% p.a. from the date of filing of the claim petition till it's realization.
- iv. Modified award be drawn up accordingly on payment of deficit court fees, if any.
- v. The compensation amount, paid/deposited in pursuance of the Award of the Tribunal shall be appropriated.
- vi. On deposit of enhanced compensation, it be released in favour of the claimant.
- vii. First appeal is accordingly disposed off. Pending civil application, if any, also stand disposed off.

(S. G. CHAPALGAONKAR, J.)

aaa/-(f)

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