



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2603 OF 2011**

Ganesh s/o Dadasaheb Jadhav
Age: 40 years, Occ: Service,
R/o Chikalthana, Tq. & Dist. Latur.

..Appellant
(Orig. Claimant)

Versus

1. Shaikh Abdul Latif s/o Abdul Rashid,
Age: Major, Occu: Truck Owner,
R/o Maulana Azad Chowk,
Malikpura, Parli Vaijnath,
Tq. Parli-Vaijnath, Dist. Beed.
2. Narsing s/o Gurunath Umbarage,
Age: Major, Occu: Driver,
R/o. Chakur, Tq. Chakur,
Dist. Latur.
3. The New India Assurance Co. Ltd.
Branch Latur, through its Branch
Manager, Branch Office, Bhagyashri Krupa,
Chandra Nagar, Latur.

..Respondents

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Mr. B. N. Patil, Advocate for the Appellant.
Mr. M. M. Ambhore, Advocate for Respondent No.3.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th FEBRUARY, 2024.

JUDGMENT:-

1. The appellant/original claimant impugns the judgment and award dated 06.05.2011 passed by the Motor Accident Claims Tribunal, Latur in M.A.C.P. No.69 of 2009 by which the appellant's claim for compensation is partly allowed. By way of present appeal, the appellant seeks enhanced compensation.

2. Mr. Patil, learned Advocate appearing for the appellant would submit that on 07.07.2008, offending Truck, owned by respondent

no.1 and insured with respondent no.3 gave forceful dash to the appellant. He suffered fracture of radius and ulna. Although, he was treated for the injuries at Planet Critical Care Center, Latur, suffered permanent disablement. Dr. Datal on examination of appellant certified 29% permanent disability. Mr. Patil would further submit that the appellant was holding agriculture land and personally cultivating the same. Because of injuries and permanent disablement, he lost his total earning capacity.

3. The claim for compensation of Rs.6,00,000/- under Section 166 of the Motor Vehicle Act was moved before the Tribunal at Latur. The appellant examined himself and relied on evidence of two doctors , so also documents depicting agricultural holding and loss of earning suffered during the period of hospitalization are also placed on record but meager award of Rs.95,160/- has been passed by Tribunal..

4. Mr. Ambhore, learned Advocate appearing for respondent no.3-Insurer justifies the award. He would submit that since the appellant continued in service with the Sugar Factory, there is no loss of earning caused to him consequent to so called permanent disability. He would submit that Dr. Datal has assessed the disability. Apparently, such disability is limb-wise. Tribunal, upon consideration of overall evidence on record passed just and proper award.

5. Having considered submissions advanced, only issue as regards to the assessment of the just compensation is raised before this Court. Admittedly, the appellant suffered fracture of radius and ulna for which he was treated at Planet Critical Care Center at Latur as indoor patient from 07.07.2008 to 21.07.2008. Dr. Datal (CW-2) testified that to have assessed 29% permanent disability to claimant due to frac-

ture of right upper arm. It creates hurdles for the appellant to do strenuous work or lift heavy articles. He candidly admitted that the bone fracture is united after treatment but maintains that the appellant faces difficulty in operating right hand. The Tribunal on overall assessment of the evidence, concluded that the appellant must have suffered 10% permanent partial disability. Tribunal observed that since, appellant continued his job and even paid by his employer for the period of his hospitalization. Accordingly, awarded the compensation of Rs.95,160/- only towards non-pecuniary losses like pain and suffering, loss of amenities in life, availment of two months leave, conveyance and medical expenses. Apparently, the Tribunal has not granted compensation by apply multiplier method towards loss of future earning. Even no separate compensation is awarded towards permanent disablement suffered by the appellant.

6. The appellant has specifically asserted in his deposition that he holds agricultural land which he was personally cultivating. The Sugar Factory where he is employed operates seasonally, therefore, he cultivates the land on end of crushing season. In that view of the matter, although the appellant has income from two sources i.e. service and agriculture, his loss of earning towards agricultural income owing to the permanent disablement cannot be ignored. Therefore, the Tribunal ought to have applied multiplier method and based on 10% permanent disablement made assessment of compensation. Tribunal has also committed error while granting compensation towards non-pecuniary heads, which needs to be corrected in the facts and circumstances of the present case. It is trite that, the permanent disablement itself is an independent head for award of compensation and Tribunal has to grant such compensation based on the nature of permanent disablement. In

the facts of the present case this Court finds that the compensation of Rs.50,000/- needs to be granted towards permanent disability.

7. So far as loss of earning of appellant is concerned, although there is no specific evidence to determine income from agriculture, it has be notionally assumed @ Rs.24000/- P.A. looking to area of land holding. Since, the appellant has suffered permanent disability of 10%, commensurate loss of earning can be assumed for want personal cultivation. In view of the aforesaid observations, the compensation needs to be reassessed as under:-

Sr. No.	Heads	Amount (Rs.)
1.	Rs.2400/- (i.e. 10% loss of earning) x 15	Rs.36,000/-
2.	Towards 10% permanent disablement	Rs.50,000/-
3.	Medical Expenses	Rs.50,560/-
4.	Conveyance	Rs.1000/-
5.	Availment of two months leave	Rs.13,600/-
6.	Loss of amenities of life	Rs.10,000/-
7.	Pain and Suffering	Rs.20,000/-
TOTAL		Rs.1,81,160/-

8. The result of the aforesaid discussion leads this Court to partly allow the appeal as under: -

ORDER

- a. The First Appeal is partly allowed with proportionate cost.
- b. The respondent nos.1 to 3 shall jointly and severally pay compensation of Rs.1,81,160/- (Rs. One Lakh Eighty One Thousand One Hundred Sixty only) to the appellant (inclusive of amount of 'NFL') together with the interest @ 6% p.a. from the date of filing of the claim petition till realization of the amount.

- c. On deposit of the compensation amount, it shall be disbursed to the appellant.
- d. The compensation already paid/released in terms of original award of the Tribunal be appropriated.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2024