

FIRST APPEAL NO.128 OF 2016

Versus

- ...

...

...

...

1. The appellant/original claimant filed this appeal under section 173 of the Motor Vehicles Act, impugning judgment and award dated 11.6.2015 passed by the M.A.C.T., Dhule in MACP No.428 of 2013, seeking enhancement of the compensation.

2. Mr. Patil, learned advocate appearing for the appellant submits that the claimant suffered injuries on account of motor vehicular accident dated 28.11.2010 due to

rash and negligent driving of the insured truck. The claimant was admitted to Civil Hospital, at Dhule. Thereafter, he was treated at Astha Hospital under supervision of Dr. Nikhil Shaha. He is operated for head injury, however, could not recover and sustained permanent disability to the extent of 40%. Certificate of disability is placed at exhibit 28. The treating Doctor Mr. Nikhil Shaha is examined before the Tribunal. He admitted that movement of the claimant was reduced and he was slow in response. Despite sufficient material on record, the Tribunal failed to assess just compensation towards future loss of earning. The claimant was working as a watchman and earning Rs.5,000/- p.m. Now he is unable to do the said work however, Tribunal granted lumpsum compensation of Rs.60,000/- towards permanent disability and Rs.20,000/- towards pain and suffering. He would therefore submit that this is a fit case for re-assessment of the compensation and passe enhanced award.

3. Mr. Deshpande, learned advocate appearing for the respondent no.2 supports the award. He submits that although disability certificate is placed on record at Exhibit-28, author of the said certificate i.e. Civil Surgeon, Dhule is not examined before the Tribunal. Dr. Shaha admitted that there is no neuro deficit after treatment to the claimant. Hence no reason can be made out to assume permanent disablement and loss of earning to claimant. He would therefore justify the award.

4. Having considered submissions advanced and after going through the record and proceeding received from the Tribunal, it can be gathered that there is no dispute as regards to the accident and consequential injuries suffered by the

claimant. Only dispute that arises for consideration in this appeal is as to assessment of the compensation. It is submitted on behalf of the claimant that compensation needs to be assessed based on the future loss of earning, whereas learned advocate appearing for the insurer opposed such assessment. Perusal of the certificate Exhibit-28 shows that, it is issued under the signature of Civil Surgeon, General Hospital, Dhule with counter signature of the Medical Officer. It states that patient is unable to do strenuous work and there are episodes of pain and swelling. Unfortunately, certificate do not suggest neurological disorder. Although, non-examination of author of disability certificate is not fatal, when it is issued by Government authority but in this case from contents of certificate on record, no definite inference can be drawn regarding exact nature of disability though it is assessed to the extent of 40%.

5. The claimant relied upon the evidence of treating doctor Dr. Shaha. His evidence shows that the claimant was admitted to his hospital from 28.11.2010 till 3.12.2010. He states that the claimant was admitted with 'left fronto parietal extra dural hematoma' with middle shape. He states that on 19.1.2015 when he examined the claimant, he found that claimant was slow to respond and became forgetful and unable to do work. In cross-examination, he admits that he had not taken any test to ascertain that the claimant became forgetful and at the time of discharge from hospital, condition of claimant was good. He also admits that no neuro deficit during examination was found. On appreciation of the evidence, the inference can be drawn that claimant had suffered head injury and, after operation, his response is slow. To ascertain actual loss of earnings, claimant could have brought further evidence.

The evidence available on record nowhere depicts that the claimant has lost his working capacity commensurate to the percentage of disablement as stated in the certificate issued by the Civil Surgeon. However, at least 20% loss of future earning can be gathered from overall survey of the evidence. Therefore, compensation needs to be re-assessed accordingly.

6. The claimant relied upon the evidence of Mr. Sunil Jain at Exhibit 38, who runs business of agricultural equipment's and alleges that claimant was working as watchman at his godown. He states that he used to pay Rs.5,000/- p.m. and now the claimant is unable to work. Therefore, he is not on job. Cross-examination of said witness suggests that there is no documentary evidence regarding employment or payment of salary. Although, he admits that he used to obtain written vouchers with signature of the claimant on payment slip, he did not produce any such evidence. Evidence of this witness does not inspire confidence. However, since claimant was a labour, his income can be notionally considered as Rs.4,000/- p.m. in absence of the reliable evidence. Considering the age of the claimant, addition of 40% can be made towards future prospects. The multiplier of '16' can be applied to the age of the claimant. The compensation awarded by the Tribunal i.e. Rs.20,000/- towards pain and sufferings needs to be maintained. Further claimant is entitled for Rs.30,000/- towards permanent disablement. The compensation towards loss of income during treatment period as assessed by the Tribunal and hospital bills of Rs.50,000/- need not be disturbed. Hence, the award passed by the Tribunal can be modified as under :-

Sr. No.	Heads	Amount
1.	Monthly income of the deceased Rs.4,000 x 12 =	Rs.48,000/-
2.	Addition of 40% towards future prospects (Rs.48,000 X 40/100) =	19,200/-
3.	Annual income comes to Rs.48,000 + 19,200 =	Rs.67,200/-
4.	20% permanent disability. Rs.67,200 x 20 / 100 Annual loss of earning	Rs.13,440/-
5.	Multiplier of '16' (Rs.13,440 x 16)	Rs.2,15,040/-
6.	Tribunal awarded :- Pain and sufferings	Rs.20,000/-
7.	Permanent disablement	Rs.30,000/-
8.	Loss of income during treatment period as awarded by the tribunal	Rs.05,000/-
9.	Hospital Bills and Medical Bill receipts Rs.40,000 + 18,000/- Assessed by Tribunal	Rs.58,000/-
	Total Compensation	Rs.3,28,040/-

(Rs. Three Lakh Twenty Eight Thousand & Forty only)

7. In view of the aforesaid findings and assessment, the award passed by the Tribunal needs to be modified. In the result, following order is passed.

ORDER

- i. First appeal is partly allowed.
- ii. The award passed by the Motor Accident Claims Tribunal, Dhule dated 11.6.2015 in MACP no.428 of 2013 is modified as under :-
 - a] The respondents do pay Rs.3,28,040/- (Rs. Three Lakh Twenty Eight Thousand & forty only) to the claimant alongwith interest @ 7.5%

p.a. from the date of the claim petition till realization of the amount.

- b] The amount of compensation deposited/released in terms of the Award passed by the Tribunal shall be appropriated.
- c]. Modified award be drawn up after payment of deficit court fees, if any.
- iii. On deposit of the compensation amount, it be released to the claimant.
- iv. First appeal is accordingly disposed off. Pending civil application, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa/- (f).