IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2116 OF 2019

Kondiba @ Satish Hiraman Waghmare
Age: 30 years, Occu: Waiter and Labour
R/o. Ladga, Tq. Mukhed, Dist. Nanded ...Appellant

Versus

1. Shankar Vishnu Ingle
Age: Major, Occu: Business
R/o. Phadtari (Natepote),
Tq. Malshiras, Dist. Solapur
(Owner of Tractor No. Bearing
Registration No. MH-45-A-5838)

2. H.D.F.C. Chubb, General Insurance
Company Ltd. Through its Branch
Manager Branch- Mumbai, Raman
House, H.T. Parekh Marg, 169, Backbay
Reclamation, Mumbai – 400020 ...Respondents

...

Mr. Ram S. Shinde, Advocate for Appellant
Mr. D.J. Patil, Advocate for Respondent No.1
Mr. Mohit R. Deshmukh, Advocate for Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th SEPTEMBER, 2024

ORAL JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing by the consent of the parties.

3. This appeal filed under Section 173 of the Motor Vehicles Act, challenges judgment and award dated 18/05/2015, passed by the Motor Accident Claims Tribunal, Udgir, in M.A.C.P. No.82/2009.

4. On 28/05/2006, appellant/claimant was returning home after his work in an auto rickshaw bearing No.MH-24-J-366. When the auto rickshaw reached near the land of Shri Dholshette, one tractor bearing No.MH-24-A-5838 came from opposite direction and gave dash to the auto rickshaw. Due to said dash, appellant/claimant sustained grievous injuries including fracture. Claimant, therefore, filed claim petition claiming compensation of Rs.2,89,000/-, which he restricted to Rs.1,00,000/- as he was not in a position to pay the Court fees. After recording evidence and hearing the parties, Tribunal awarded compensation of Rs.64,270/- along with interest @ 9% per annum, to be paid by respondent No.1 owner of the offending vehicle and exonerated respondent No.2 Insurance Company. Claimant has filed present appeal challenging exoneration of Insurance Company and the calculations made by the Tribunal while awarding compensation.

5. Heard learned advocate for appellant/claimant, learned advocate for respondent No.1 and learned advocate for respondent No.2. Perused the record.

6. Learned advocate for claimant assailed the finding recorded by Tribunal, by which Insurance Company is exonerated. He submits that, though the Tribunal has accepted that claimant has suffered 11% disability, it has wrongly calculated monthly loss at Rs.192.5/-, which view of the fact that claimant was getting monthly

salary of Rs.3,500/-, should have calculated at Rs.385/-.

7. Learned advocate for Insurance Company, on the other hand, supported the impugned judgment and award. He submits that claimant has failed to prove that he has suffered 11% permanent disability and therefore, Tribunal has rightly awarded compensation of Rs.64,270/-, which is not liable to be interfered with in the facts of the present case.

8. Learned advocate for respondent No.1 owner has supported the impugned judgment and award. However, he submits that Insurance Company is wrongly exonerated by the Tribunal.

9. Tribunal has exonerated respondent No.2 Insurance Company on the ground that no driving license of the driver of offending vehicle i.e. tractor is on record. The tractor driver was called upon to produce the driving license, however, the same was not produced either by the owner or by the driver. Therefore, the Tribunal has drawn inference that, at the time of accident driver was not holding valid and effective driving license. By relying on the observations in ***Civil Appeal No.231/2012 (United India Insurance Co. Ltd. Vs. Sujata Arora and Others) and National Insurance Co. Ltd. Vs. Brij Pal Singh and Another, [2003 ACJ 1274],*** Tribunal has exonerated respondent No.2 Insurance Company.

10. The Apex Court in ***Shamanna Vs. Oriental Insurance Co. Ltd. [(2018) 9 SCC 650]***, held that “if the driver of the offending vehicle does not possess a valid driving licence, the principle of “pay and recover” can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle”. In the light of this decision, Insurance Company is liable to pay the claimant and recover the same from the owner of offending vehicle.

11. There appears substance in the contention of appellant/ claimant that Tribunal has committed error in calculating amount of compensation. As the Tribunal has held that claimant has suffered 11% disability, in view of the salary of claimant at Rs.3,500/- per month, 11% disability assessed at Rs.192.5/- is incorrect calculation and it should have been Rs.385/-.

12. Learned advocate for Insurance Company has vehemently opposed the said argument of claimant contending that claimant has failed to prove that he suffered 11% permanent disability on record. He was hospitalized only for two days and there is nothing on record to show that he has undergone any operation.

It is a specific case of claimant that after the accident he had taken treatment at Dr. Tanaji Chandewar Hospital, Jalkot, for two days and thereafter, he was admitted in Government Hospital, Nanded and after discharge from the Government Hospital, he is taking treatment at Udgir in outdoor patient department.

Admittedly, Insurance Company has not filed appeal challenging the said finding. In that view of the mater, this Court is not inclined to accept this argument on behalf of Insurance Company.

13. In view of acceptance by the Tribunal that claimant has suffered 11% disability and the fact that said finding is not challenged by the Insurance Company, this Court is of the view that claimant is entitled for future loss due to 11% disability at Rs.385/- per month. Hence, claimant is entitled for following compensation:-

Sr. No.	Particulars	Compensation
1.	Annual Income (Rs.3,500 x 12)	Rs.42,000/-
2.	Loss due to 11% disability (Rs.42,000 x 11%)	Rs.4,620/-
3.	Total annual loss after multiplied by multiplier Rs.4,620 x 17	Rs.78,540/-
4.	Medical expenses	Rs.25,000/-
	Total Compensation needs to be awarded	**Rs.1,03,540/-**
	Compensation awarded by Tribunal	Rs.64,270/-
	Total Enhanced Compensation (Rs.1,03,540 – Rs.64,270)	**Rs.39,270/-**

14. For the aforestated reasons, following order:-

ORDER

(I) First Appeal is partly allowed with proportionate costs.

(II) Judgment and award dated 18/05/2015, passed by the Motor Accident Claims Tribunal, Udgir, in M.A.C.P.

No.82/2009, is modified to the extent that claimant is held entitled for enhanced compensation of Rs.39,270/- and that respondent No.2 Insurance Company shall pay the compensation to claimant and will be entitled to recover the same from owner.

(III) Insurance Company shall deposit the enhanced compensation along with interest accrued thereon in the Tribunal, within 12 weeks from the date of uploading of this order.

(NITIN B. SURYAWANSHI, J.)