



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 3631 OF 2018

Shaikh Mateen Ahmad s/o Mohammad Iqbal, ... **Appellant**
Age 23 years, Occu: Nil
R/o Masjid Ali Mohalla, Erandol,
District Jalgaon

VERSUS

1. Shaikh Mustak s/o Shaikh Ibrahim
Age Major, Occu: Truck owners,
R/o Islampur, Erandol, Dist. Jalgaon
2. Reliance General Insurance Co. Ltd.
Registered Office at Mumbai
Through its Branch Manager
R/o Hotel Jalmahal, 2nd floor,
Dhake Corporate, Dhake Colony,
Jalgaon, Dist. Jalgaon
3. Raees s/o Subhanbhai Shaikh, ... **Respondents**
Age Major, Occu: Driver,
R/o KGN Nagar, at Post Nashirabad
District Jalgaon

Mr. Dipesh Pande, Advocate for the Appellant
Mr. A. S. Usmanpurkar, Advocate for Respondent No.2

CORAM : Y. G. KHOBRADE, J.
Dated : 19th March, 2024

JUDGMENT

1. Heard Mr. Dipesh Pande, the learned counsel for Appellant-Original claimant and Mr. A. S. Usmanpurkar, the learned counsel for Respondent No. 2-Insurance company. The Respondent Nos. 1 and 3 remained absent.

2. The Appellant/Original claimant invoked jurisdiction of this court under Section 173 of the Motor Vehicles Act, 1988 and takes exception to the Judgment and Award dated 07.08.2018 passed by the learned Member, Motor Accident Claims Tribunal, Jalgaon to the extent of enhancement of compensation.

3. It is the case of the claimant that, he is driver by profession. At the time of accident, he was under employment of Respondent No. 1 as a second driver-cum-conductor on six wheeler transport vehicle bearing registration No. MH-18-M-1921. Respondent No.1 is the owner of said transport vehicle, which was duly insured with respondent No.2-Insurance Company. According to Claimant, on 08.12.2009, at about 2.00 p. m., the vehicle was proceeding from Erondal to Kadi (Gujrat) Road, Vadoda to Ahmedbad Express highway at village Vasad. The truck was loaded with cotton and driven by first driver i.e. Respondent No. 3. While overtaking other truck, suddenly, Respondent No.3 applied breaks, due to which control over the vehicle was lost and it went upon divider of the road and vehicle turned down to opposite side in direction of cleaner side. Due to turtled of vehicle, he sustained crash injuries. He was hospitalized at Civil Hospital Baroda and subsequently, hospitalized at Ayush Orthopedic Hospital, Baroda. He was hospitalized for a month and during said period he has undergone surgery for three times. The FIR bearing Crime No.

138/2009 was registered against the Respondent No. 3 Driver.

4. The claimant further contended that, his ring finger and little finger are amputated through meta-tarso-phalanges joints and skin of fingers are removed to cover amputated area. On 31-12-2009, he discharged from Hospital. He incurred Rs. 2,00,000/- (Rs. Two Lakhs) towards medical expenses. He lost 100% earning capacity due to amputation of ring and little fingers and unable to perform work of driver. The Appellant further claimed that, the Medical Board of Civil Hospital Dhule, Certified about 40% permanent disability. He was second driver-cum-conductor with Respondent No.1 and was drawing salary @ Rs.9000/- per month. He was 23 years old at the time of accident. Therefore, prayed for compensation to the tune of Rs.8,00,000/- (Rupees Eight lakhs).

5. Respondent No. 2 Insurance Company filed W. S. Exh. 22, and resisted the claim of the Claimant. The Respondent No. 2 pleaded that, the Respondent No. 3 Driver was not holding valid Driving Licence and driving the vehicle in violation of Traffic Rules. So also, the vehicle was driven without valid permit and fitness certificate at the time of accident, hence, prayed for dismissal of the claim petition.

6. In order to prove the claim, the Claimant filed evidence affidavit

at Exh. 29 and examined P. W.-2 Dr. Charudatta Vikram, at Exh. 69, P. W.-3 Jasawantlal Thakkar at Exh. 76, P. W.-4 Mohammad Iqbal Shaikh Vazir at Exh. 83 and proved documentary evidence Exh. 37 To 57 etc.

7. On 07.08.2018, the learned Member of the Motor Accident Claim Tribunal, passed the impugned Judgment & Award and granted compensation to the tune of Rs. 1,09,200/- thereby the respondent No. 1 was directed to pay said compensation with interest @ 6% p. a. from the date of petition till realization of the amount.

8. The learned counsel for the Appellant submits that, the learned Tribunal failed to consider oral as well as documentary evidence available on record in its perspective and granted meager compensation erroneously. It further argued that, the learned Tribunal wrongly considered notional income to the tune of Rs. 4000/ per month, hence, prayed for modification of impugned Judgment & Award to the extent of Rs. 6,90,800/-.

9. The learned counsel appearing for the Appellant has placed reliance on Judgment of the Hon'ble Supreme Court in Civil Appeal No. Nos. 2476-2477 of 2019, **M.R. Krishna Murthi Vs. The New India Assurance Co. Ltd.**, Dated 05.03.2019, wherein the Claimant who was doing one year of internship was getting stipend of Rs.5000 per month

and also he had cleared U. P. S. C. examination for the post of Medical Officer and was scheduled to be appointed as Medical Officer after completion of internship. Therefore, his salary was considered as Rs.18,000/- to 20,000/- per month.

10. Per contra, Mr. A. S. Usmanpurkar, the learned counsel appearing for Respondent No.2 supported findings recorded by the Member, M.A.C.T. and submits that, the Appellant/Claimant failed to prove his income and not examined his employer. Therefore, the Member, M.A.C.T. considered notional income and granted compensation, which is just and proper. Hence, prayed for dismissal of the Appeal.

11. Having regard to the submission canvassed on behalf both sides I have gone through the record. In the case in hand, prima facie it appears that, on 08.12.2009, the transport vehicle No. MH-18-M-1921 met with an accident, in which the appellant was allegedly engaged as second driver-cum-conductor. It is not in dispute that due to accident, the claimant lost his two fingers i.e. ring finger and little finger. The Medical Board, Civil Hospital, Dhule examined the claimant and issued Certificate Exh.70 certifying 40% functional disability. Though, Appellant/Claimant claimed that he was drawing salary of Rs.9000/- per month, however, he fail to produce documentary evidence to prove that he was getting salary of Rs.9000/- per month. The claimant himself deposed that he was in

employment of Respondent No. 1, but he failed to examine his employer. Therefore, in absence of documentary or oral evidence it cannot be held that the claimant was drawing salary of Rs.9000/- per month. The learned Member considered the notional income of the appellant to the tune of Rs. 4000/- per month has passed the impugned judgment and award.

12. In Paragraph No. 13 of the impugned Judgment and Award, the learned Tribunal held that, the vehicle in question was insured with Respondent No. 2 under the Policy Exh. 46, which was valid on the date of accident, however, as per said policy, Respondent No.1 paid premium for driver/ cleaner/conductor (IMT-39) Number of Persons 4 besides basic liability premium and premium as to own damage of the vehicle. The Appellant has not produced driving licence or any other document to prove that at the time of accident he was working being a second driver on the vehicle in question. Therefore, as per the insurance policy Exh. 46 words "*legal liability premium to pay to driver/cleaner/ conductor*" are used and required to be read whichever is suitable and applicable to the motor vehicle for which the insurance policy is issued. Therefore, the learned Tribunal exonerated Respondent No. 2 Insurance Company from payment of compensation, which does not appears perverse and illegal.

13. Needless to State that, at the time of accident, the Appellant/claimant was 23 years old and as per the ratio laid down in the

case of *Sarla Verma Vs. Delhi Transport Corporation*, reported in (2009) 6 SCC 121, the multiplier of '18' is applied. The Appellant/Claimant proved that he sustained 40% disability, however, the learned Tribunal considered only 10% disability. The disability Certificate Exh. 70 proves 40% disability caused to the claimant. The Respondents have not challenged the disability certificate. Therefore, the Appellant/Claimant is entitled for the enhance compensation to the extent of 30%.

14. Since, the learned Tribunal already granted compensation of Rs. 1,09,200/- by considering 10% functional disability of the Appellant/Claimant and he has proved 40% disability. Therefore, the Appellant-Claimant is entitled to receive the enhanced compensation by considering 40% disability, as follows:

1.	Gross yearly income (4000 x 12)	Rs. 48,000/-
2.	Multiplier of 18 (48000 x 18)	Rs.8,64,000/-
3.	40% disability (8,64,000 x 40%)	Rs. 3,45,600/-

Therefore, compensation of Rs.1,09,200/-, granted by the learned Tribunal is required to be enhanced to the tune of Rs.3,45,600/-

15. In view of the above, I pass the following Order.

ORDER

- (i) The appeal is partly allowed with proportionate costs.
- (ii) The judgment and award passed by the Motor Accident Claims

Tribunal, Jalgaon in MACP No. 304 of 2010 dated 07.08.2018 is modified.

- (iii) The amount of compensation is enhanced to the tune of Rs. 3,45,600/- from Rs. 1,09,200/-.
- (iv) The Respondent No.1 is liable to pay the compensation of Rs. 3,45,600/- (Rupees Three Lakhs Forty Five Thousand Six Hundred) alongwith interest @ 6% p. a. from the date of filing of Claim Petition i.e. 04.08.2010 till the date of realization of the entire amount to the appellant.
- (v) Respondent No.1 shall deposit enhanced compensation amount along-with accrued interest before this Court within eight weeks.
- (vi) The amount already paid or deposited in pursuance of the Award passed by the Tribunal shall be appropriated.
- (vii) The Appellant/Claimant is permitted to withdraw the amount after it is deposited.

(Y. G. KHOBRAGADE, J.)

JPChavan