2025:BHC-AUG:5841

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

962 FIRST APPEAL NO. 506 OF 2017

Zukariya @ Zukarya Maharya @ Mahariya
Barela @ Pawara,
Age : 32 years, Occu.: Now Nil,
R/o.: Dhodlyapani, Taluka : Niwali,
District : Badwani
At present : Gurhadpani, Taluka : Shripur,
District : Dhule ... APPELLANT
(Original Claimant)

VERSUS

1. HDFC Irgo General Insurance Company Ltd.,
D M Tower, Flat No.205-206, Dusari Mala,
New Palasiya Road, Indore (MP)

2. Shamsing Rebade Kanoje,
Age : Adult, Occu.: Vehicle Owner,
R/o.: Rajmali, Taluka : Niwali,
District : Badwani (MP) ... RESPONDENTS

...

Mr. Mahajan Lalitkumar S, Advocate for Appellant
Mr. Deshmukh Mohit R., Advocate for Respondent No.1

....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 28/02/2025.

JUDGMENT :

1. The appellant, who is the original claimant, has filed this appeal for enhancement of compensation by challenging the judgment and award dated 02/09/2015 in MACP No.350 of 2012, passed by the learned Member MACT, Dhule i.e. the learned tribunal.

2. The necessary particulars in respect of accident and the treatment taken by the appellant / claimant, are not seriously disputed by the learned counsel for respondent No.1- Insurance Company. Thus, the only dispute between the parties is in respect of quantum of just and fair compensation.

3. The learned counsel for the appellant / claimant submits that though the learned tribunal has granted total compensation of Rs.4,47,000/- to the appellant / claimant alongwith the interest at the rate of 8% p.a., but failed to consider the heads of compensation such as pain and suffering, actual loss of income, expenditure towards attendant and special diet and future medical treatment. He pointed out that the learned tribunal had in fact considered the monthly income of the appellant / claimant as Rs.3,000/- at lower side. In fact, the income should have been considered as Rs.4,000/-.

4. On the contrary, the learned counsel for the respondent No.1 – Insurance Company supported the judgment of the learned tribunal by contending that just and fair compensation, has already been granted. However, he fairly submitted that the aforesaid additional heads of compensation are not considered by the learned tribunal. It is to be noted that the Hon'ble Apex Court in the recent judgment dated 05/11/2024 in case of ***Miss. Rushi @ Ruchi Thapa vs. M/s. Oriental Insurance Co. Ltd. And another***, has calculated the amount of compensation under various heads mentioned therein by referring its

earlier judgment in the case of ***Kajal vs. Jagdish Chand and others, AIR 2020 SC 776***. In the aforesaid judgment, the Hon'ble Apex Court has considered various heads, such as loss of earnings, loss of future prospects, attendant charges, pain, suffering and loss of amenities, future medical treatment and actual loss of income alongwith the medical and hospitalization expenses. As such, the compensation under these heads needs to be calculated in the light of evidence on record.

5. There is no dispute that the appellant / claimant was working as an agricultural labour. Though it is claimed by the learned counsel for the appellant that in absence of any documentary evidence, his notional income needs to be considered to the tune of Rs.4,000/- per month, but the learned tribunal has considered his monthly income as Rs.3,000/-. The said monthly income as held by the learned tribunal appears proper considering the rate of minimum wages at the relevant time i.e. for the year 2010. Thus, there cannot be any second opinion in respect of the same. Thus, if the income is considered to that extent, the yearly income of the appellant comes to Rs.36,000/-. Further, in view of judgment of Hon'ble Apex Court in the case of ***Jagdish vs. Mohan and others, (2018) 4 SCC 571***, future prospects to the extent of 40% needs to be added as the appellant was self-employed. Thus, on making such addition his yearly income comes to Rs.50,400/-. Further, the learned tribunal has considered the permanent disability sustained by the applicant to the extent of 50% by considering the evidence of medical

officer, wherein it is stated that the appellant is able to do sitting job. Apparently, such permanent disability is properly arrived at and therefore, no interference is needed in the same. When such percentage of disability is applied to calculate the loss of earnings, then the appellant is entitled for 50% of the compensation by considering 100% disability i.e. 50,400 X 17 (multiplier) = 4,28,400/-. In the aforesaid amount of compensation in respect of future loss of earnings, amount of Rs.1,00,000/- towards pain, suffering and loss of amenities needs to be added. Further, the appellant is also entitled for expenditure on account of having artificial limb to the extent of Rs.15,000/-. Further, it is evident that the appellant was hospitalized on different occasions and totally for a period of three months. Therefore, his actual loss of earning is determined to Rs.9,000/-. Further, an additional amount of Rs.10,000/- under the head of attendant and special diet can also be granted. The learned counsel for the rival parties did not dispute the amount of compensation granted by the learned trial court on account of medical expenditures, which is of Rs.1,15,896/-. Thus, considering these aspects, the just and fair compensation is calculated as below.

No.	**Head**	**Amount (in Rupees)**
1.	Future loss of earning including future prospectus	4,28,400/-
2.	Pain, suffering and loss of amenities	1,00,000/-
3.	Future medical expenses	15,000/-
4.	Actual loss of income	9,000/-
5.	Attendant charges and special diet	10,000/-

6.	Actual medical expenditures as granted by the learned tribunal	1,15,896/-
	TOTAL =	**6,78,296/-**

As such, the appellant is now entitled for total compensation of Rs.6,78,296/-. However, the amount granted by the learned tribunal of Rs.4,47,000/- needs to be deducted as the respondent No.1- Insurance Company has already satisfied the award impugned by paying the interest at the rate of 8% p.a. as granted by the learned tribunal. Thus, the appellant is now entitled for enhanced amount of compensation of Rs.2,31,296/-. The learned counsel for the respondent No.1 – Insurance Company vehemently argued that the rate of interest on such enhanced compensation shall not be more than 6% p.a. However, considering the year of the accident i.e. 2010, the rate awarded by the learned tribunal @ 8% p.a. is reasonable and in consonance with the prevailing rate of interest. Thus, the appellant shall be entitled for the same rate of 8% p.a. on the enhanced compensation. Thus, the appeal is partly allowed and the appellant is entitled for enhanced compensation of Rs.2,31,296/- alongwith interest @ 8% p.a. from the date of claim petition till its realization. The respondents shall pay the said enhanced compensation jointly and severally within six weeks. They are directed to deposit the said compensation directly with the concerned MACT, Dhule. On deposit of such amount of compensation, the appellant shall be at liberty to withdraw the same by filing appropriate application to the concerned MACT, Dhule.

6. The appellant shall pay the deficit court fees, if any, on the enhanced compensation, within four weeks after it is computed by the office.

7. Record and proceedings be sent to the concerned MACT forthwith.

Accordingly, the appeal is disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-