IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 240 OF 2017

Badshah Gafoor Shaikh ... **Appellant**
Age 68 years, Occu: Business
R/o Belapur Bk. Tq. Shrirampur
Dist. Ahmednagar (Ahilyanagar)

VERSUS

1. Anil Pandit Ambekar
Age 48 Years, Occu: Business,
R/o Niphad Dist. Nashik

2. The Branch Manager,
Royal Sunderam Alliance Insurance Co. Ltd.
(Legal & T.P. Claim Dept.)
Soranto Bldg. No.6, 1st floor
Latis Bldg. Road, Adiyaz, Chennai-600020

Mr. V. S. Bedre, Advocate for the Appellant
Mr. A. S. Deshpande & Mr. A. S. Puranik, Advocates for Respondent No.2

CORAM : Y. G. KHOBRAGADE
DATE : 30.09.2025

ORDER:-

1. By the present appeal, the appellant challenged the judgment and award dated 06.08.2016, passed in MACP No.230 of 2011 by the learned Motor Accident Claim Tribunal, Shrirampur Dist. Ahmednagar (Ahilyanagar), to the extent of quantum of compensation.

2. The present appellant is the original claimant, who has sustained disability in an accident. The Respondent No. 1 the Owner of offending

vehicle, whereas the Respondent no. 2 is the Insurance Company with whom offending vehicle was insured. The parties to present appeal would be referred in their original capacity as the "Claimant" and "Respondents".

3. In nutshell facts rise to this appeal are that, on 20.06.2011, the claimant was travelling in a jeep and at the relevant time, the offending Truck bearing No. MH-04-CD-5850 owned by the Respondent no. 1 came from back side of the jeep and gave a dash, due to which the appellant sustained severe injuries. The claimant was hospitalized due to severe injuries. The claimant allegedly sustained 35% permanent disability. The claimant incurred huge medical expenses. Therefore, the claimant had filed a Claim Petition No. 230 of 2011 and prayed for compensation of Rs.13,50,000/- including medical expenses, loss income and future expenses for medical treatment etc..

4. The Respondent No. 2 Insurance Company filed written statement at Exh. 31 and denied claim of the claimant. However, respondent No.1 fail to file his written statement.

5. After considering rival pleadings of both the sides, learned Tribunal framed Issues at Exh.34. The appellant/claimant filed evidence affidavit at Exh. 34 and proved various documents including medical bill, disability certificate, X-ray plate etc.

6. On 06.08.2016, the learned Tribunal has passed the impugned judgment and award holding that, the claimant has proved medical bills to the tune of Rs.2,00,000/- out of Rs.3,95,393/-. However, the claimant failed to prove about loss of future income as per Exh. 55 Disability Certificate. After taking into consideration evidence and material brought on record, the learned tribunal granted compensation of Rs.3,60,000/- under all heads. Being aggrieved by said judgment and award, the claimant has instituted present appeal for enhancement of compensation.

7. Heard at length Mr. V. S. Bedre, learned counsel for the appellant and Mr. A. S. Deshpande and Mr. A. A. Puranik, learned counsel for the respondent Insurance company.

8. Mr. V. S. Bedre, learned counsel for the appellant/claimant canvassed that, on 22.06.2011, when the claimant was proceeding in a Jeep at that time the Truck bearing No. MH-04-CD-5850 owned by respondent No.1 came from back side of the Jeep and gave dash, due to which the claimant sustained multiple injuries and he was hospitalized for a considerable period. The Medical Officer C. P. W. 2 issued the Disability Certificate Exh. 55 certifying that the appellant has sustained permanent disability of 35% and loss of the permanent future income. However, the learned tribunal failed to consider Disability Certificate Exh. 55 and granted meager amount of Rs.1,00,000/- towards future expenses. To

butress this submission, the learned counsel for the claimant relied on case of **Rajkumar Vs. Ajay Kumar & othrs, 2011 (2) MHLJ 569.**

9. The learned counsel for the claimant further canvassed that the learned tribunal failed to consider huge expenses incurred by the appellant towards his medical treatment. However, the learned tribunal discarded most of Medical Bills and awarded meager compensation. Therefore, prayed for quash and set aside impugned Judgment and Award to the extent of quantum of compensation.

10. The learned counsel appearing for the appellant further canvassed that during the course of trial, the appellant produced Income Tax return to prove his annual income of Rs.3,10,000/-. However, the learned tribunal failed to consider said evidence and awarded meager compensation. Therefore, findings recorded by the learned tribunal are perverse, illegal and bad in law. Hence, prayed to quash and set aside the impugned judgment and award to the extent of quantum of compensation and prayed enhancement of compensation.

11. Per contra, the learned counsel appearing for the respondent Insurance Company supported the findings recorded by the learned tribunal. The learned Counsel appearing for the Respondent no. 2 canvassed that, the accident was occurred on 22.06.2011. The P. W. Dr. Vijayanand Patil medically examined the complainant on 20-02-2012 after

laps of near about 8 months. In order to show the annual income, the appellant prepared Income Tax return on 31.07.2011 for the period from 01.04.2009 to 31.03.2011 i.e. subsequent to the accident. So also, the claimant has manufactured false and fabricated medical bills. Further, the Claimant also produced other medical bills which were not related to the injuries sustained by the appellant due to accident. Therefore, the learned tribunal considered the claimant’s actual income as well as substantial Medical Bill and awarded proper compensation, hence, prayed for dismissal of the appeal.

12. Having regard to rival submissions canvassed on behalf of both the sides, I have gone through the R & P. On face of record it appears that, the Respondent no. 2 has not disputed about occurred of accident on 22-06-2011. It is a matter of record that, on 22.06.2011 at about 6.15 p.m., the appellant was travelling in Jeep and at that time, the Truck bearing registration No. MH-04-CD-5850 owned by the Respondent no. 1 and gave dash from rear side of the Jeep, near Sutarpada Ghat area within the jurisdiction of Dharmpur Police Station. After the accident, the Investigation Officer visited at the spot of accident and drawn the spot panchanama, seizure panchanama. The I.O., recorded statement of witnesses and after due investigation a charge-sheet was filed against the driver of offending Truck. The Respondent no. 2 Insurance company

admitted fact that the Respondent no. 1 is an owner of offending truck and at the relevant time said truck was insured with it.

13. Needless to say that, as per spot panchanama and FIR, the accident was occurred due to fault of the Truck. The appellant sustained injuries and he was hospitalized in Sai Hospital, Dharmpur and later on shifted to Pramila Hospital, Mumbai. In order to prove permanent disability and medical certificate Exh. 55, the appellant/claimant examined CPW-2-Medical Officer Dr. Vinayanand Bhanudas Patil at Exh. 54. The CPW 2 deposed that, on 20.02.2012, he medically examined the claimant. The injured was hospitalized w.e.f. 23.06.2011 to 30.06.2011 in Sainath Hospital. On clinical and radiological examination, he found that the claimant was suffered from fracture tibia and fibula lower 3rd, treated with open reduction and internal fixation with locking plating. He has issued disability certificate Exh.55, certifying 35% disability to right lower limb. However, in cross examination, CPW-2 -Medical Officer admitted that he had not found any other fracture other than tibia and fibula. The CPW 2 admitted in his cross examination that he has not mentioned in the medical certificate about permanent loss of earning capacity.

14. In **Rajkumar Vs. Ajay Kumar & othrs, 2011 (2) MHLJ 569 =(2011) 1 SCC 343,** it is held that effect of permanent disability on the earning

capacity of the injured must be considered while awarding the compensation. In case in hand though the claimant has examined the Medical Officer CPW 2 but the claimant failed to bring material on record that due to disability described in Certificate Exh.55 he has lost future income capacity.

15. On careful consideration of findings recorded by the learned tribunal, it prima face appears that, on 20.06.2011 accident was occurred. On 29.08.2011, the claimant instituted the claim petition before the learned Member, MACT. Initially the appellant claimed that he was in service and was drawing income of Rs.6000/- per month. On 31.07.2011, first time and just prior to institution of the claim petition, the appellant prepared Income Tax returns for three years preceding to the accident and produced it on record. However, the claimant failed to prove said Income Tax returns.

16. On face of record it appears that the appellant/claimant produced medical bills pertaining to year 2015 which are not related to the injuries which he sustained in the accident. The learned tribunal has considered Medical Bill dated 23-06-2011 vide receipt Nos. 19758, 19759, 19760 & 19760 but the claimant produced other Medical Bills dated 24.06.2011 of the same Medical Store previous to receipt Nos. 18201, 18202, 18203 and 18204. The claimant again produced other Medical Bills/Receipt Nos.

19775, 19793 of the same date. Not only this but the claimant again produced medical bills/receipt of next two days vide receipt No. 18287 dated 19.06.2011 and receipt no. 18381 dated 04.7.2011. All these receipts are certainly appears to be descending order. Therefore, the learned Tribunal discarded said medical bills, which prima facie appears to be fake, fabricated and manufactured.

17. The appellant has not brought any substantial material on record to show that he was drawing income as per the income tax returns which have been prepared subsequent to the accident. Further, the appellant has not obtained disability certificate from any Medical Board constituted under the Persons with Disabilities Act. In view of the above discussion, I do not find that the findings recorded by the learned tribunal are perverse and no grounds are set out to interfere with the said findings. Hence, the appeal is dismissed.

17. Record and proceedings be remitted back to the trial court.

(Y. G. KHOBRAGADE, J.)

JPChavan