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

FIRST APPEAL NO.4775 OF 2017

Pandurang s/o. Rangrao More,
Age : 40 years, Occu : Agriculture & Business,
R/o. Khasgi, Tq. Omerga,
A/p. Mahado Galli, Omerga,
Tq. Omerga, Dist. Osmanabad ... Appellant

Versus

1. Siddiki Ismail Kamaloddin,
Age : Major, Occu : Business,
R/o. Guntoji, Tq. Omerga,
Dist. Osmanabad
(Owner of Rickshaw No. MH-25-M-1409)
2. United Indian Insurance Company Ltd.,
Latur, Through The Divisional Manager,
IIIrd Floor, Shivaji Chowk above access bank,
Kings Corner, Osmanabad ... Defendants

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Shri. Gaurav L. Deshpande, Advocate for the Appellant
Shri. Sushant B. Chaudhari, Advocate for Respondent No.1
Shri. Atul B. Gatne, Advocate for Respondent No.2

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 19.03.2025

PRONOUNCED ON : 02.04.2025

JUDGMENT :-

1. The Claimant has filed this First Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'M.V. Act'), being not satisfied by the Judgment and Order / Award dated 19.07.2017 passed by the learned Motor Accident Claims Tribunal (hereinafter referred to as the 'Tribunal'), Omerga in Motor Accident

Claim Petition No.10/2014, partly allowing the Claim Petition and directing Opponent Nos.1 and 2 to jointly and severally pay Rs.74,300/- (Rs. Seventy Four Thousand Three Hundred) including NFL to him towards compensation with interest @ 8% per annum from the date of Application till realization.

2. The Appellant is the Claimant / Orig. Petitioner before the learned Tribunal. He filed the said Petition under Section 166 of the M.V. Act contending that he was the agriculturist and doing allied business and earning Rs.5,000/- (Rs. Five Thousand) per month. On 21.12.2013 around 06:30 a.m. when he was walking on the road heading towards Gunjoti, one Auto Rickshaw bearing No.MH-25-M-1409 belonging to Opponent No.1 came from the opposite direction in high speed and in rash and negligent manner and gave dash to him. Due to the said accident, he suffered injuries and was hospitalized. He was medically treated. Due to the said accidental injury, he suffered disability. As the said Auto Rickshaw was owned by Opponent No.1 and insured with Opponent No.2 - Insurance Company, he claimed compensation of Rs.2,00,000/- (Rs. Two Lakh) from them with interest @ 12% per annum.

3. The aforesaid Claim Petition was contested by both the Opponents. Opponent Nos.1 and 2 filed their Written-statements at Exhs.20 and Exh.39, respectively. They denied that the motor vehicular

accident took place due to involvement and rash and negligent driving of the said Auto Rickshaw. They denied the entitlement of the Appellant for the compensation.

4. The learned Tribunal framed the following issues at Exh.23.

“I S S U E S

- 1. Whether the petitioner proves that he sustained injuries resulting into permanent disablement in the Motor Vehicular Accident due to rash and negligent driving of the driver of the motor vehicle namely Rickshaw No. MH-25/M-1409?*
- 2. Whether the petitioner is entitled to claim compensation? If yes, what shall be the quantum ?*
- 3. Who is liable to pay compensation ?*
- 4. What order and award ?”*

5. In support of the Claim Petition, the Appellant examined himself as PW1 at Exh.26 and brought on record the police papers comprising FIR at Exh.27, Spot Panchanama at Exh.28, Medical Papers at Exhs.30, 31 and 34, medical bills at Exhs.35, 36 and 37 and copy of the Registration Certificate of the said Auto Rickshaw at Exh.32. The Appellant also examined the Doctor as PW2 at Exh.43, in whose hospital the Appellant was admitted. In his evidence, the Form Comp ‘B’ was brought on record at Exh.44.

6. The Opponents did not examine any witness.

7. The learned Tribunal, after hearing both the sides and considering the evidence available on record, passed the

impugned Judgment and Award.

8. It is submitted by the learned Advocate for the Appellant that this Appeal is preferred only on the point of quantum. The Claim Petition under the Motor Vehicles Act are the summary proceedings and has to be decided on preponderance of probability. The Doctor was examined in support of the injuries suffered by the Appellant. Merely because there was no technical assessment of the disability, the Appellant should not suffer. Meager compensation under the head 'disability compensation' is awarded. Due to the disability, the Appellant could not work with full strength in the agricultural operations. There was responsibility on the Appellant of his family. The evidence of the Appellant was not countered. The mooted pleadings are to be considered liberally. Even the future loss due to the disability has not been granted. Under such circumstances, the Appeal needs to be allowed and the Appellant be granted compensation amounting to Rs.3,60,000/- (Rs. Three Lakh Sixty Thousand).

9. It is submitted by the learned Advocate for Opponent No.2 / Insurance Company that there was no base in support of the submissions made by the learned Advocate for the Appellant. There is no dispute in respect of the accident. The Award was satisfied by the Insurance Company. The controversy was in

respect of disability compensation. In absence of medical evidence showing functional disability due to the accident, the contention of inadequate compensation was not sustainable. The Appellant failed to establish the physical disability which would affect the future income. The Appellant failed to establish his age, his income and functional disability. There was no proof of loss of income. In view of the cross-examination of the doctor examined by the Appellant, no case is made out for compensation towards disability. There was no certificate in the nature of Form Comp 'B' issued by the Civil Surgeon to establish the disability of the Appellant. The learned Tribunal has rightly assessed the evidence available on record and awarded proper and just compensation and hence, the Appeal be dismissed. In support of his submissions, he relied on the Judgment in **Raj Kumar vs. Ajay Kumar and Another (2011) 1 SCC 343**.

10. Heard both the sides. Perused the evidence available on record. The above referred Judgment cited by the learned Advocate for the Insurance Company is in respect of principles relating to compensation in injury cases. In the said Judgment, it is observed as under:

“Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference on the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. When compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under that head”

Motor Vehicular Accident by the use of above referred Auto Rickshaw owned by Opponent No.1 and insured with Opponent No.2, respectively, at the relevant time. There is also no dispute in respect of medical treatment by the Appellant for the injuries suffered in the motor vehicular accident. The only controversy is in respect of disability compensation. According to the treating Doctor, who was examined as PW No.2 in the Claim Petition, the Appellant was treated as the Indoor Patient from 21.12.2013 till 25.12.2013. The Appellant had suffered the fracture in his left leg. On 12.10.2014 the Appellant came to him for permanent disability certificate and after examining the Appellant, he issued the Certificate of 40% permanent disability. The further evidence of the Doctor in the cross-examination show that the disability certificate is issued according to the disability of the body part. At the time of issuing disability certificate, in all 9 (nine) tests are to be undertaken. Each test has the base as 10%. It was to be mentioned as to what was the percentage of disability in each test. It was not mentioned as to what tests were done and what was its base before issuing the disability certificate at Exh.44. Due to the operation, the Appellant was cured and it was successful. Suggestion is given that, due to the injuries there was no effect on the day to day work of the Appellant.

12. The above evidence of the Medical Officer falls short of establishing the functional disability of the Appellant. Though according to the medical evidence, the Applicant got 40% disability, there is no

evidence at all to show that the said disability had materially affected the Appellant's working capacity and consequently his income. Considering the evidence available on record, particularly the medical evidence, in the light of the principles referred in the above Judgment, no fault can be found with the impugned Judgment and Order / Award wherein it is observed that, the Appellant was not entitled for compensation for loss of future income. Though, according to the treating Doctor the disability was 40%, there is no evidence to show the functional disability of the Appellant i.e. the effect of his 40% disability on his earning capacity. In the light of the evidence available on record, no fault can be found with the compensation awarded by the learned Tribunal. Eventually, the Appeal fails and the following order is passed.

ORDER

- (i) The First Appeal is dismissed.
- (ii) The Record and Proceedings be sent back to the learned Tribunal.

(NEERAJ P DHOTE, J.)

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