IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 194 OF 2010

Mohd. Hashim Sheikh s/o Mohd. Hafiz,
Age about 28 years, Occupation – Nil,
R/o Bakra Kamela, Kamptee, District
Nagpur. .... **APPELLANT**

VERSUS

1) The National Insurance Co. Ltd.,
through its Branch Manager,
Kamptee Branch, Kamptee, District
Nagpur.

2) Abdul Karim s/o Sheikh Vazir Qureshi,
Age about Major, Occ. - Business,
R/o Bhaji Mandi, Kamptee, District
Nagpur.

3) ~~Sheikh Farooq Sheikh Gaffar~~ - (Deleted as per order
~~Age about Major, Occu. - Service~~, dt. 16-11-2010)
~~R/o Mahatma Gandhi Nagar, Bhaji~~
~~Mandi, Kamptee, District Nagpur~~. .... **RESPONDENTS**

Ms. Rohini Mankar, Advocate h/f. Mr. P.S. Mirache, Advocate for the appellant,
Mr. A.W. Paunikar, Advocate for respondent No. 1,
None for respondent No. 2.

CORAM : ABHAY J. MANTRI, J.

DATE : 12-08-2025.

ORAL JUDGMENT :

Appellant/original petitioner, being dissatisfied with the judgment and award passed by the learned Member, Motor Accident

Claims Tribunal, Nagpur (hereinafter to be referred to as "***the Tribunal***") on 19-06-2008 in Claim Petition No. 911/2003, whereby partly allowed the petition and granted compensation to the tune of Rs. 37,519/-, has preferred this appeal.

2. It is a case of the original petitioner that on 29-08-2003, he was working as a Cleaner/Conductor on the Truck bearing registration No. MH-31/AP-2872 (hereinafter referred to as "***the truck***") was proceeding from Kamptee to Amravati on Highway No. 6. When the said truck reached near Navneet Nagar, it gave a dash to the Bus bearing registration No. MH-27/C-897, and the accident occurred. Accordingly, a crime was registered against the driver of the truck vide Crime No. 135/2003 for the offences punishable under Sections 279 and 338 of the Indian Penal Code.

3. The petitioner was 22 years old and was working as a Cleaner and earning an amount of Rs. 4,000/- per month. However, due to the accident, both his legs were fractured, operated and rods were inserted in them. He was admitted to Mayo Hospital, Nagpur, for 45 days. Due to the injuries, he suffered acute pain and loss of income.

4. The truck was owned by respondent No. 2 and insured with respondent No. 1-Insurance Company. Therefore, respondents Nos. 1 and 2 are jointly and severally liable to pay the compensation amount to the petitioner. Hence, the petitioner had filed the claim petition.

5. Respondent No. 1 filed a written statement and denied the allegations in toto. It was contended that the petitioner had not produced any document to show that he was working as a Cleaner/Conductor and earning Rs. 3,000/- per month. It was denied that the petitioner suffered a permanent disability. It was further contended that two vehicles were involved in the accident; however, the petitioner had not made party to the bus owner, therefore, the petition was liable to be dismissed for non-joinder of a necessary party. The driver of the truck was not holding a valid driving licence at the time of the accident, thereby the owner had committed a breach of the terms and conditions of the insurance policy. They also denied that the truck gave a dash to the bus. Hence, it urged the dismissal of the petition.

6. Respondent No. 2 had not filed a written statement, and respondent No. 3 was reported to be dead.

7. After considering the pleadings, the learned Tribunal had framed the issues. Pursuant to the said issues, the petitioner examined himself, produced and proved the documents. On the other hand, the respondents did not adduce any evidence in support of their defence. Upon considering the evidence on record and written notes of the parties, the learned Tribunal held that the truck driver was responsible for the accident caused and directed the respondents to pay compensation of Rs. 37,519/- to the petitioner. The owner of the truck had committed a breach of the terms and conditions of the insurance policy, and, therefore, respondent No. 1-Insurance Company is at liberty to recover the said compensation amount from the owner of the truck. Being dissatisfied with the judgment and Award, the petitioner has preferred this appeal.

8. Heard learned Advocates Ms. Rohini Mankar for the appellant and Mr. A.W. Paunikar for respondent No. 1. Learned Advocate for the appellant submitted that the appellant has filed this appeal only for enhancement of the compensation amount. However, during the argument, she argued that respondent No. 1 did not adduce any evidence to prove that the owner of the truck had committed a breach of the terms and conditions of the policy; therefore, she urged to set aside the said finding. On the other hand, learned Advocate for

respondent No. 1 submitted that the insurance company has not preferred any appeal against the impugned judgment, which itself indicates that they have no grievance against the said findings recorded by the learned Tribunal, and hence, he supported the impugned judgment and award.

9. Having heard the learned Advocates for the parties and gone through the impugned judgment and award, the following points arise for determination.

(i) *Whether respondent No. 1-Insurance Company proved that the driver of the truck was not holding a valid and effective driving licence and thereby respondent No. 2-owner of the truck had committed a breach of the terms and conditions of the insurance policy?*

(ii) *Whether the appellant is entitled to enhanced compensation*?

(iii) *Whether any interference is required in the impugned judgment and award*?

10. It appears that the appeal was admitted on 11-03-2010. It is pertinent to note that none of the respondents has preferred any appeal against the impugned judgment and award of the learned Tribunal, which indicates that they have no grievance about the findings recorded by the learned Tribunal. As such, it would be appropriate to deal with the question *whether respondent No.1-Insurance Company has proved that the owner of the truck had committed a breach of the*

terms and conditions of the policy or not; and whether the appellant is entitled to enhanced compensation or not?'

<u>Point No. (i)</u> :

11. While dealing with this point, it appears that though in the written statement, respondent No. 1 averred that the driver of the truck was not holding the valid and effective driving licence at the time of accident, however, respondent No. 1 failed to adduce any oral or documentary evidence in that regard and thereby failed to prove that the driver of the truck was not holding valid and effective driving licence at the time of accident. I have perused the findings recorded by the learned Tribunal in para 14 of the impugned judgment, which are reproduced as under :

> *"14. It is true that the insurance company has not adduced oral or independent evidence except by submitting documents with list Exhibit 30. The said documents disclose that the claim of the owner, respondent No. 2, was rejected on the ground that the driver did not have a valid driving licence. In spite of such a clear position, respondent No. 1 has not come forward and preferred to keep mum. Therefore, I see much substance in the contention of the respondent that there is a breach of the policy condition. However, in view of the above authorities relied upon the petitioner at the first instance insurance company will have to satisfy the award, and then is at liberty to recover the award amount from the owner of the truck. Accordingly, I have answered issue No. 3."*

12. On bare perusal of the findings, it appears that the learned Tribunal observed that the insurance company has not adduced oral or independent evidence except by submitting documents with list Exhibit 30. I have perused Exhibit 30, i.e. list of documents. Along with the said Exhibit 30, a photocopy of the communication dated 19-04-2004 and a copy of the insurance policy were produced on record. Neither the documents proved by respondent No. 1 nor exhibited. However, the learned Tribunal considered the said photocopy of the communication and held that *the said communication itself indicates that the driver of the truck was not holding a valid and effective driving licence at the time of the accident*. The said finding is contrary to the settled position of law. Respondent No. 1 failed to adduce any cogent and reliable evidence to prove the fact that the driver of the truck was not holding a valid and effective driving licence, and thereby, respondent No. 2 owner of the truck committed breach of terms and conditions of the insurance policy, cannot be sustained in the eyes of law and same is liable to be set aside. Accordingly, I answer point No. (i) in the negative.

<u>Point Nos. (ii) & (iii)</u> :

13. While considering the quantum of compensation, the learned Tribunal has held that the petitioner has failed to adduce any cogent

and reliable evidence to prove that he was earning Rs. 3,000/- per month and same was not taken into consideration and held that the respondent was earning Rs. 2,500/- per month and based on it, calculated the compensation amount. Similarly, the learned Tribunal has awarded Rs. 10,000/- for loss of earnings during treatment and rest, as well as Rs. 7,519/- for medical bills.

14. It is pertinent to note that respondent No. 1 has not disputed that the petitioner was earning Rs. 2,500/- per month, so also the rest of the findings recorded by the learned Tribunal. That being so, in my view, the petitioner is entitled to enhanced compensation amount based on the earning of Rs. 2,500/- per month as per the mandate laid down in ***National Insurance Company Ltd. v. Pranay Sethi and Ors., (2017 (16) SCC 680*** and ***United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur And Ors., (2021) 11 SCC 780.***

15. It appears that the petitioner was hospitalised for 45 days; therefore, in my view, he is entitled to Rs. 10,000/- under the head of loss of earnings during the treatment period, Rs. 15,000/- for loss of pains and suffering, and Rs. 25,000/- expenses spent towards the attendant and special diet. Apart from that, the petitioner is entitled to the loss of earnings to the extent of disability sustained by him.

16. It is worth noting that in the accident, both the legs of the petitioner were fractured and operated as well as rods were inserted in them. The petitioner has produced the disability certificate '**FORM COMP "B**" issued by Dr. R.E. Ambade, which is marked as '*Article-A'***,** wherein he has certified that the petitioner has sustained 15% permanent disability. The petitioner, in his testimony, categorically deposed that he has sustained 15% permanent disability and accordingly produced the Disability Certificate in Form "B" before the Court. However, during his cross-examination, no suggestion was put to him by respondent No. 1 that he did not sustain 15% permanent disability, nor suggested that the percentage mentioned in the said certificate was incorrect or that it was obtained falsely; therefore, there is no reason to discard his testimony in that regard.

17. Having considered the evidence of the petitioner, the disability certificate indicates that the petitioner has sustained 15% permanent disability. The Court can take the judicial note that, though he has sustained 15% permanent disability, functional disability can be taken as 10% for considering the loss of future income of the petitioner.

18. In view of the above, I deem it appropriate to hold that the injured petitioner was earning Rs. 2,500/- per month and he has

sustained 15% permanent disability. However, for the purpose of functional disability, it can be taken as 10% and, therefore, it is just and proper to grant compensation in view of the mandate laid down in ***Pranay Sethi*** and ***Satinder Kaur @ Satwinder Kaur and Ors.*** (supra). Hence, I answer the points accordingly. Therefore, it would be appropriate to determine the compensation of the appellant as under :

Compensation Head	Amount Awarded
Income per month	Rs. 2,500/-
Income per annum	Rs. 30,000/-
Loss of earnings due to functional disability that occurred (10%)	Rs. 3,000/- (Rs. 30,000 x 10%)
Multiplier as age is between 21 to 25 years (18)	Rs. 54,000/- (Rs. 3,000 x 18)
Future Prospects as age is below 40 (40%)	Rs. 75,600/- (Rs. 21,600 (54,000 x 40%) + Rs. 54,000/-
Loss of earnings for the treatment period	Rs. 10,000/-
Pain and Suffering	Rs. 15,000/-
Expenses for attendant and special diet	Rs. 25,000/-
Total Compensation	**Rs. 1,25,600/-**

19. Consequently, the appeal is partly allowed. The impugned judgment and award are required to be modified to the extent that respondent No. 1-Insurance Company is entitled to recover the amount of compensation from the owner of the truck as held in paragraph No. 18. Respondent No. 1 is directed to pay the enhanced compensation

amount with accrued interest as awarded by the learned Tribunal from the date of the claim petition till its realisation.

20. It is also evident from the record of the appeal that respondent No. 1 has not paid the amount of compensation to the appellant during the pendency of the appeal. If respondent No.1 has made the part payment of the compensation amount to the appellant, then respondent No. 1 is directed to pay the remaining payment of compensation along with accrued interest thereon, from the date of the petition till its realisation, within eight weeks.

(ABHAY J. MANTRI, J.)

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