

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 23rd OF SEPTEMBER, 2023

MISC. APPEAL No. 3496 of 2019

BETWEEN:-

**IKRAR S/O IRFAN, AGED ABOUT 32 YEARS,
OCCUPATION: DRIVER GALI NO. 8, DHAR
ROAD, 374-B, CHANDAN NAGAR, INDORE
(MADHYA PRADESH)**

....APPELLANT

(BY TEJU KUMAR KHICHI - ADVOCATE)

AND

**1. SHARIF S/O ABDUL SAMAD, AGED
ABOUT 43 YEARS, 47, BHAGAT SINGH
MARG (MADHYA PRADESH)**

**2. RAFIQUE KHAN S/O BABU KHAN, AGED
ABOUT 35 YEARS, OCCUPATION:
OWNER 189, ASHRAF NAGAR
KHAJRANA (MADHYA PRADESH)**

**3. THROUGH MANAGER NATIONAL
INSURANCE COMPANY LTD. 4TH FLOOR
APOLLO TOWER, M.G. ROAD (MADHYA
PRADESH)**

.....RESPONDENTS

**(BY PRADIP KUMAR GUPTA – ADVOCATE WITH SHRI BHASKAR
AGRAWAL – ADVOCATE FOR RESPONDENT NO.3/INSURANCE
COMPANY)**

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*This appeal coming on for judgement this day, the court passed
the following:*

JUDGEMENT

- 1] Heard finally, with the consent of the parties.
- 2] This miscellaneous appeal has been filed under Section 173(1) of Motor Vehicles Act, 1988 against the award dated 01.03.2019, passed in Claim Case No.700158/2016, by 17th Member, MACT, Indore (M.P.) whereby a compensation of Rs.61,000/- has been awarded to the appellant.
- 3] In brief, the facts of the case are that the appellant met with an accident on 29.02.2016, at around 9:40 PM when he was dashed by a car bearing registration No.MP-09-CD-0940, which was being driven rashly and negligently by the respondent No.1, as a result of this accident, appellant Ekrar suffered various injuries on his body, including a fracture in his right leg's tibia, fibula, and also of pubic bone. Subsequently, the appellant filed a case under Section 166 (1) of Motor Vehicles Act before the Claims Tribunal claiming compensation of the injuries suffered by him, and the learned Member of the MACT, after recording the evidence has awarded a sum of Rs.61,000/- as compensation, and being aggrieved of the inadequacy of the same, present appeal has been filed.
- 4] Counsel for the appellant has submitted that the appellant was a driver by profession and as per Dr. Ashish Mehrotra (PW-2) he has suffered 35% disability, whereas the learned Member of the MACT has not considered any disability. It is also submitted that the income of the injured has also been considered as Rs.4000/-, which should have been Rs.10,000/- per month. It is also submitted that under the other heads, the assessment is on lower side. Thus, it is submitted that the award may be appropriately enhanced.
- 5] Counsel for the respondent No.3/Insurance Company, on the

other hand, has opposed the prayer and it is submitted that no case for interference is made out. Counsel has submitted that the learned Member of the MACT has rightly held that as the disability certificate has been issued after two and half years of the accident, and that too by a non-treating doctor, no reliance can be placed upon it and otherwise also, the disability, if any, was of lower limb only. It is also submitted that the income has been rightly assessed by the Claims Tribunal and thus, the appeal being devoid of merits, is liable to be dismissed.

6] Having considered the rival submissions and on perusal of the record, it is found that the appellant has suffered fracture of his right leg's tibia, fibula and also of pubic bones, which have been proved by Dr. Ashish Mehrotra (PW-2), who has given the disability certificate of 35%, and in his cross-examination, nothing has been elicited by the Insurance Company, which may dispute his deposition. This court is of the considered opinion that merely because Dr. Ashish Mehrotra was not the treating doctor, his testimony cannot be discarded, and the Claims Tribunals should also keep this aspect in mind that not all the doctors are always willing to come to court to be subjected to cross examination, and in such circumstances, if a disability certificate has been issued by a non-treating doctor, its evidentiary value should be assessed on its own merits, without being influenced by the fact that the doctor issuing the same is not a treating doctor. This court is also of the opinion that merely because a disability certificate has been issued after some delay, it cannot be rejected on its face value, unless some specific reasons are assigned for the same.

7] Thus, considering the fact that the disability certificate of 35 % was of lower limb, it can be considered that the appellant suffered

total disability of 10 %. Further considering the fact that he was driver by profession, the assessment of the income of the deceased @ Rs.4,000/- p.m. appears to be on lower side, which according to this Court, ought to have been at least Rs.5,000/-. It is also found that under the other heads also, the amount needs to be re-assessed. So far as the compensation towards the permanent disability is concerned, it has to be assessed by applying the multiplier of 13 looking to the age of appellant who was 32 years old at the time of accident. In such circumstances, this Court finds that the assessment of the compensation, as compare to the assessment made by the MACT, can be made as under:-

Assessment made by the claims Tribunal:-

Injuries & P.D.	Rs..25,000/-
Medical expenses	Rs.15,000/-
Transportation, attainder, special diet and pain, suffering and loss of wages (for two months)	Rs.21,000/-
Total	Rs.61,000/-

The calculation made by this Court:-

Permanent Disability 5000 x 12 = 60000 x 10% (P.D.) = 6000 x 13 =	Rs.78,000/-
Medical Expenses	Rs.15,000/-
Transportation	Rs.5,000/-
Special Diet	Rs.5,000/-
Attainder	Rs.5,000/-
Pain and suffering	Rs.10,000/-
Loss of Wages	Rs.10,000/- (for two months)

Total	Rs.1,28,000/-
Difference amount	
1,28,000 – 61,000 =	Rs.67,000/-

8] In view of the above, the appeal stands partly *allowed* and the appellant shall be entitled to receive an additional enhanced amount of **Rs.67,000/-** towards the compensation along with the interest as awarded by the tribunal.

9] Appeal stands partly **allowed** and **disposed of**.

(Subodh Abhyankar)
Judge

Pankaj