

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Civil Appellate Jurisdiction.**

FIRST APPEAL NO. 228 OF 2003.

SHAIKH FAZLUR RAHEMAN AHMED.
VERSUS
VASANT BHUSAHEB HASE & ANR.

Appearance =>

Mr. Vinayak Sudhakar Bedre, Advocate for the Appellant.

Mr. S.K. Shinde, Advocate for Respondent No.1.

Mr. A.B. Gatne, Advocate for Respondent No.2.

CORAM : S.V. Gangapurwala, J.

DATE : 8th October, 2015.

Per Court :-

Present Appellant has filed M.A.C.P. No.1171 Of 1993 in the Motor Accident Claim Tribunal, Ahmednagar under Section 166 of the Motor Vehicle Act, on the account of injuries sustained by him in an accident dated 27th October, 1993. The learned Member, M.A.C.T., Ahmednagar vide his Judgment dated 23rd May, 2002 partly allowed said Claim Petition. Present Appeal is preferred for enhancement of the compensation amount.

[2] Heard Mr. Vinayak Bedre, learned counsel for the Appellant. He strenuously contends that the appellant had suffered 40% disability. Salary of the appellant as on the date of the accident was Rs.4523/- per month. That was without considering the benefits of 6th Pay Commission. On 24th August, 1996 the appellant was

declared unfit and terminated from the Service. This is only because of the injuries sustained by the appellant in an accident. The appellant was terminated from the service as such, whole salary from the date of the termination till the date of his superannuation should be counted as monetary loss. This has not been considered by the tribunal. The tribunal has not considered the future prospectus also. According to the learned counsel, calculations in the tabular form which are reproduced in paragraph No.10 of the Judgment are not considered by the tribunal in proper perspective. There was no impediment for the tribunal to award the compensation towards the loss of salary to the extent of Rs.1027394/- apart from other non pecuniary damages so also medical bill. The learned counsel for the Appellant submits that the tribunal has committed error in non considering the monetary loss, as put forth.

[3] Mr. Gatne, learned counsel for the Insurance Company submits that, the tribunal has awarded the compensation as if it is a death claim. The whole salary of the Appellant is considered. $\frac{1}{3}^{\text{rd}}$ amount is deducted and multiplier of 11 is applied. In fact, the salary of the appellant would be considered and loss to the extent of 40% disability only will have to be considered and such amount would be much less than that has been awarded by the tribunal. According to the learned counsel for the insurance company even on account of pains and suffering, much more amount has been awarded.

[4] Mr. S.K. Shinde, learned counsel for Respondent No.1 adopts the argument as of Mr. Gatne, learned counsel for Insurance Company.

[5] With the assistance of learned counsel, I have gone through the Judgment, Record & Proceedings. Claim before the tribunal was the Injury Claim. Age of the applicant, on the date of accident was 47 years. Compensation can be awarded by applying multiplier factor, considering the facts of present case.

The appellant has sustained 40% disability. Monthly salary of the appellant in the year 1996 was Rs.4523/-. Tribunal has considered the salary as Rs.5000/- per month and has deducted 1/3rd towards the personal expenses and applied multiplier of 11.

If salary of Rs. 5000/- per month is considered and multiplier that would be applicable is 13 and compensation can be awarded to the extent of 40%, the amount of Rs. 4 Lakhs which is computed by the tribunal towards loss of dependency is just and proper. I am not inclined to disturb the said finding. The tribunal has further awarded amount towards the medical expenses of Rs.51,000/-. So also further Rs. 7000/- is awarded towards attending the hospital by jeep. The Tribunal has also awarded Rs.1 Lakh towards pains & suffering and loss of amenities, which is just and reasonable amount.

[6] Considering the above, tribunal has awarded the reasonable amount of compensation. No interference is called for. Appeal is dismissed. No costs.

(S.V. GANPURWALA, J.)