

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

**FIRST APPEAL NO.3026 OF 2015**

Nikhil S/o. Surendra Jaiswal

.. Appellant

**Versus**

Sandeep S/o. Baban Akhade  
and another

.. Respondents

Mr.S.S.Shinde, Advocate for the appellant

Mr.R.R.Karpe, Advocate for respondent No.2

Mr.S.G.Chapalgaonkar, Advocate for respondent No.3

**CORAM : A.V.NIRGUDE, J.**

**DATED : 19.09.2016**

**P.C. :-**

1. Heard learned counsel for the parties. The appeal is admitted and taken up for final disposal.

2. This is the claimant's appeal seeking enhancement in the amount of compensation awarded by the judgment dated 10.08.2015 passed in M.A.C.P.No.126 of 2013.

3. The appellant sustained serious injury while he was climbing a hill of Mahabaleshwar when his car met with an accident due to collusion to a truck that was coming in opposite direction. In seriously injured

condition the appellant was firstly admitted in Rural Hospital, Mahabaleshwar. Thereafter he was taken to Sanjivani Hospital, Satara. Thereafter due to seriousness of his injury he was shifted to Sanchiti Hospital, Pune. Due to timely medical help he survived. He had sustained injury to his shoulder and legs. All the fractures eventually healed

4. Before filing of this claim mainly against the owner and insurer of the offending truck, he obtained a medical certificate indicating as to how much percentage of permanent disability had occurred to him. The certificate indicated that he suffered 30% of permanent disability.

5. While describing his source of income he stated that he is a partner in a restaurant business at Beed. His other partner is his brother. And due to physical disability he is unable to work as deftly as earlier.

6. The appellant produced on record all documentary proof which he collected to indicate as to how much amount he had spent on his medical treatment. He could show that he spent about Rs.2,10,000/-.

7. The learned Member of the Tribunal did not award

any compensation towards loss of earning. He awarded:-

The cost of medical treatment Rs.2,10,000/- plus Rs.50,000/- towards disability plus Rs.40,000/- on account of pain and suffering plus Rs.10,000/- towards loss of amenities of life. In addition to this learned Member also awarded Rs.40,000/- towards loss of income during the period of medical treatment.

8. Surprisingly learned Member held that despite 30% permanent disability no loss of income can be awarded to the appellant. This aspect of the case is apparently the most important question required to be decided in this appeal.

The question is whether due to 30% permanent disability the appellant sustained loss of earning and to what extent?

9. On this point the appellant's evidence is required to be perused. He stated on oath that his physical strength is reduced and because of this his capacity to work as owner/Manager of the restaurant is reduced. He said earlier to the accident he used to sit on the counter of the restaurant for collecting cash and etc. After the accident he has stopped sitting there.

Learned Member simply ignored this aspect of the case and concentrated mainly on fact that apparently there was no loss of income of the business of restaurant.

10. In my view learned Member, erred in not appreciating a common occurrence that after a major accident a person's physical strength is reduced. In this case the expert's opinion indicated that the appellant had lost 30% of physical strength. This opinion must have been accepted but even here the learned Member showing disrespect to the expert's opinion taunted him that the expert was rather "liberal" in giving opinion. Thereby he indicated that the Medical Expert witness was not quite honest. Learned Member erred in expressing such a drastic opinion without there being any material to discredit the veracity of the expert's opinion. When a person comes back to work after major accident he would not be as strong as he was earlier. His movement would be slowed and painful. His general confidence would get reduced at least for some time. Running a restaurant is a business requiring skill, mental as well as physical. There are lots of responsibilities of owner/Manager of a restaurant. He should be very alert all the time. No doubt in this case the appellant has a partner and the partner would take over additional responsibilities. Still eventually having regard to the loss of physical

strength the appellant would suffer loss of earning.

11. In my view in addition to compensation he was awarded by the learned Member he is entitled to compensation towards loss of income. In my view he has suffered 30% of earning capacity. Having regard to this following is the calculation for loss of income.

12. The income of the appellant Rs.1,55,000/- p.m. Disability 30% = 46,500/-. Income 45,500 x Multiplier by 17 = Rs. 7,90,500/- The appellant thus is entitled to this amount.

13. In view of this the appeal should be succeeded. A new award be drawn. Other part of the award passed by the learned Member shall remain undisturbed.

**[A.V.NIRGUDE, J.]**