

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.2227 OF 2011

Mr.Marcelino Elvino Fernandes

...Appellant

Versus

Sukhdev Singh Jaimal Singh & Anr.

...Respondents

.....
Mr.A.M.Gokhale for the Appellant.

Mr.S.S.Jinsiwale for Respondent No.2.
.....

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: SEPTEMBER 14, 2017

P.C. :

1. This appeal is directed against the judgment and award dated 05.12.2009 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai, in M.A.C.P. No.613 of 2006.

2. This appeal arises out of injury claim. This is an appeal for enhancement of compensation of Rs. 6,98,000/- granted by the tribunal. The appellant was working as a driver of the luxury bus bearing registration no. MH-04-C-3849. The accident took place on 12.12.2005.

A motor truck bearing registration no. MH-04-AL-6425 driven in rash and negligent manner, and there was head to head collision and the bus was completely damaged. In the accident, the leg of the appellant was crushed and his right leg was fractured. It is the claim of the appellant that he was not rash and negligent. His left leg was amputated and his right leg was operated on five occasions. He had to purchase artificial limb. He had filed the claim application for compensation of Rs. 20 lakhs. After notice, the Insurance Company appeared. Opponent no. 1 did not file the Written Statement. However, the Insurance Company contested the claim on the point of quantum and claim of the amount is excessive. The appellant was examined himself and he examined his employer to prove his salary and also a witness on the point of purchasing artificial limb. The Insurance Company did not examine any witness. The compensation of Rs. 6,98,000/- alongwith interest @ 7.5% p.a. awarded by the tribunal is found less and, therefore, this appeal for enhancement is filed.

3. Learned counsel for the appellant has submitted that he relied on claim made by different heads by the appellant. He has further submitted the appellant was working as a driver. His left leg was amputated and the right leg had five operations due to which he

assessed 100% financial disability, which ought to have been counted by the tribunal. He has further submitted that the tribunal has erred in considering 70% disability of the appellant. He has argued that the tribunal has considered his income of Rs. 4000/- p.m. instead of Rs.12,000/- p.m. He has relied on the statement given by the employer Shankar Krishna Virkar i.e. the owner of luxury bus who has stated that the appellant was drawing salary of Rs. 8000/- p.m. and Rs. 4000/- trip allowances per month so he was drawing salary of Rs. 12,000/- p.m. He has further argued that the learned Member, tribunal failed to consider the heads of future prospectus and loss of future earnings of the appellant. He has further submitted that the tribunal has erred in adopting multiplier 15. The age of the appellant was 32 and the multiplier should have been fixed as 16.

4. Per contra, learned counsel for respondent no.2/Insurance Company has supported the order passed by the learned Member, M.A.C.T., Mumbai. He relied on the evidence and claim affidavit filed by the appellant. He has submitted that in para 9 of the claim affidavit, an amount of Rs. 89,099/- is claimed for purchasing of medicines and hospital bills inclusive of Rs. 31,500/- was paid to Endolite India Ltd. for artificial limb. He pointed out that the medical bills of Rs. 89,000/- was

fully awarded by the tribunal. He argued that the tribunal has awarded Rs. 15,000/- for operation to remove implant. He has further submitted that the employer Shankar Krishna Virkar could not produce any documentary evidence to substantiate his evidence of payment of salary of Rs. 12,000/- per month. He argued that Rs. 4000/- for overtime is definitely on a higher side in the year 2000 to 2005.

5. Heard submissions. Perused the judgment and award. The appellant has lost his left leg. He was a driver by occupation and thus, there is 100% financial disability, which ought to have been taken into account instead of 20%. At the time of accident, he was 32 years old. As per the scheduled prescribed in the judgment in the case of ***Smt. Sarla Varma & Ors. Vs. Delhi Transport Corporation & Anr.*** (Civil Appeal No. 3483 of 2008 dated on 15.04.2009) passed by the Division Bench of the Supreme Court, the multiplier is 16 on the point of earning of the appellant. The amount quoted cannot be accepted as entailed. At the time of accident, he was driving the luxury bus owned by PW-2 Shankar Virkar, who is in the box and thus he proved the fact of employment and, therefore, considering the evidence on the point that he was drawing salary of Rs. 8000/- p.m. in the year 2005 can be reasonably accepted. However, the evidence of drawing trip allowance

of Rs.4000/- p.m. cannot be accepted. Thus, instead of Rs. 4000/- his salary ought to have been fixed as Rs. 8000/- p.m. The learned Member, tribunal did not consider the aspect of future prospectus and also the occupation of the appellant was driver. In the year 2005, whatever salary was drawn by the appellant is definitely gradually increased in future and, therefore, I am of the view that 20% can be considered towards future prospectus and the amount of compensation is enhanced as per the following table.

Head	Amount
Salary	8000/-
20% +	1600/-
Future prospectus	9600 X 12 months = 1,15,200/- per year
Multiplier 16	1,15,200 X 16 = 18,43,200/-
Quoted for disability	18,43,200- 5,04,000 = 13,39,200/-
Other heads + interest @ 7.5% from the date of filing of application till realization as per Section 171 of the Motor Vehicles Act.	13,39,200+1,94,000= 15,33,200/-

6. In view of the above, First Appeal is partly allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)