

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

FIRST APPEAL NO.1187 OF 2014

ICICI Lombard General Insurance Company Ltd. ... Appellant

Vs.

Vishal Madhukar Shimpi & anr. ... Respondents

Mr.Nikhil Mehta i/b M/s.KMC legal Venture for the Appellant

Mr.T.J. Mendon, for Respondent No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 22, 2017**

ORAL JUDGMENT:

1. Admit.
2. As the issue involved is short, by consent of the parties, Appeal is heard finally.
3. The First Appeal challenges judgment and award dated 21.2.2008 passed by the learned Member, Motor Accident Claims Tribunal, Palghar in MACP No.174 of 2005, thereby partly allowing the claim filed by the applicant, who was injured in the accident. The Tribunal has awarded compensation of Rs.114343/- including the amount of No Fault Liability alongwith 9% interest p.a. On the

remaining amount of compensation i.e., excluding NFL amount from the date of the petition i.e., 21.9.2005.

4. The applicant was travelling in an auto rickshaw on 28.4.2005 and one motor cycle while overtaking the vehicle, dashed against the auto rickshaw and in the said accident, the applicant fell on the road. He sustained severe injuries to his elbow, back, hand and lost two maxillary teeth. At the time of the accident, he was 23 years old and earning Rs.1500/- per month. He spent medical expenses to the tune of Rs.40,000/- and had sustained partial permanent disability to the extent of 28%. hence, he filed the claim application for compensation against the opponent owner of the motor cycle and the opponent No.2, the insurance company, with whom the vehicle i.e., the motor cycle was insured. The insurance company i.e., respondent No.2 appeared in the claim; filed written statement; opposed the case on the basis of rash and negligent driving of the motor cyclist. The claimant examined himself and also on the point of disability and the injuries, one Dr.Jadhav, who confirmed partial permanent disability had noticed to the tune of 28%. The trial Court considered the evidence and the defence and fixed the notional

income of Rs.3,000/- per month of the insured claim. The Tribunal fixed the multiplier of 17 and granted compensation for loss of earning capacity of Rs.61,200/-. It also granted Rs.5,000 for pain and suffering, Rs.39143 for medical expenses. For loss of income, the notional income was fixed at Rs.3,000/- p.m. and thus, awarded compensation of Rs.114,343/-. The insurance company challenged the amount of compensation on the ground that the compensation awarded is excessive and hence, this appeal.

5. Learned Counsel for the appellant has submitted that the main objection is that the trial Court has not stated anything about the nature of job of the claimant and without giving any reasoning in respect of job, especially the nature of the job, it has adopted the multiplier at 17 and erroneously fixed the amount of compensation for loss of earning, which is on a higher side. The learned Counsel relied on the judgment of the Supreme Court in the case of **Raj Kumar vs. Ajay Kumar & anr.**¹ and has submitted that the trial Court has rightly applied the multiplier at 17 and has supported the order passed by the learned Member.

¹ (2011) 1 SCC 343

6. Perused the judgment; the documents placed before the Court by the learned Counsel for both sides. The issue is only in respect of quantum, especially regarding applicability of multiplier. In view of the specific facts of this case, the multiplier is adopted with a view to quantify the income of the person in future so that the possible loss of income can be covered up to certain extent by applying a theory of multiplier.

7. In **Raj Kumar vs. Ajay Kumar & anr.** (supra), the Supreme Court has laid down the three steps to ascertain the effect of permanent disability on the actual earning capacity of the injured. They can be summarised as follows:

- i) The Tribunal has to ascertain what activities the claimant could carry on in spite of the permanent disability
- ii) To examine his profession, service or avocation and nature of the same.
- iii) To find out whether the claimant is totally disabled from earning any kind of livelihood or is partially disabled from his earning capacity or whether he is totally prevented and restricted from discharging his previous activities and functions.

8. In the present case, the applicant/claimant has lost two maxillary teeth. It appears that at that time, the applicant was a student but there is no specific evidence declared by him and, therefore, the trial Court has considered the notional income at Rs.3,000/-. It is necessary to consider the effect of the injury. The loss of teeth at the age of 23 years definitely amounts to permanent injury. Though teeth can be substituted or implanted, it is a permanent loss of a natural body part. So, it is a permanent disability. The Dental doctor who had examined the claimant has stated that it is a partial permanent disability to the extent of 28% and it is rightly rejected by the Tribunal and held that it was partial permanent disability to the extent of 10%. I do not want to disturb that finding. However, while applying the multiplier, though there is a set formula prescribed in **Sarla Varma & Ors. vs. Delhi Transport Corporation**², while deciding the amount of compensation in the case of the injured and applying the multiplier, the court has to follow the principles laid down in **Raj Kumar vs. Ajay Kumar & anr** (supra). The loss of earning capacity depends on the nature of job of the claimant. Loss of maxillary teeth is a great loss for a model or an actor or an actress depending on the

² (2009) 6 SCC 121

profession. However, unless it is specifically brought on record, it is difficult to assess how the loss of two maxillary teeth is going to affect adversely the earning capacity of the claimant. Therefore, I am not in agreement with the view taken by the Tribunal in respect of adopting 17 as multiplier.

9. While hearing the arguments of the learned Counsel for both sides, it was submitted that the claimant was unmarried and 23 years old and loss of 2 teeth has caused disfigurement of his face, which is true. Apart from disfigurement, there is also discomfort throughout to the claimant and that is to be measured in terms of money and thus, under the head of discomfort and disfigurement, I am of the view that the remaining amount which is reduced from the head of multiplier can be adjusted and thus, there is no change in the amount awarded by the Tribunal and thus, on the point of quantum, the appeal fails.

10. The amount of Rs.25,000/- which was deposited at the time of admission of the appeal, if any, to be transferred to the Motor Accident Claims Tribunal and the same be allowed to be withdrawn.

11. First Appeal is disposed of accordingly.
12. In view of the disposal of the First Appeal, Civil Application No.3690 of 2008 does not survive and the same is disposed of accordingly.

(MRIDULA BHATKAR, J.)