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

960 FIRST APPEAL NO. 1033 OF 2002

Ramkrishna s/o Anejirao Nandedkar
Age: 38 years, Occu.: Business,
R/o.Nanded. ..Appellant

VERSUS

Maharashtra State Road Transport
Corporation Ltd., through its
Divisional Controller, Nanded. ..Respondent

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Advocate for Appellant : Mrs.S.G.Chincholkar and Mr.G.N.Chincholkar
Advocate for Respondent : Mr.M.K.Goyanka

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CORAM : M.S.SONAK, J.
DATE : 2nd FEBRUARY, 2018

ORAL JUDGMENT:-

1) Heard learned counsel for the parties. The challenge in this appeal is to the Judgment and award dated 11.5.1994 made by the Motor Accident Claims Tribunal, awarding a sum of Rs.81,000/- with the interest @ 12% p.a. on the date of claim i.e. 23.3.1989 till the date of realisation of the amount.

2) Mrs.S.G.Chincholkar learned counsel for the appellant submits that there is ample evidence on record to suggest that the monthly income of the appellant was Rs.2,000/- per month. She submits that there is also evidence on record that the appellant has owner of 15-20 Acres of Agricultural land from which he was getting substantial income. There is also evidence that the appellant was a owner of the machinery shop from which again he was getting substantial income. She submits that since the appellant claimed that he is earning Rs.2,000/- per month based on evidence on record, this claim was required to be accepted.

3) Mrs.Chincholkar learned counsel submits that for almost 6-8 months, due to accident, the appellant was unable to discharge any function and consequently for 6-8 months, the appellant is required to be compensated for loss of income to the extent of Rs.16,000/-. She submits

that from the evidence on record, it is clear that the appellant has suffered serious disability and by applying multiplier of 12, it is only appropriate that the appellant is paid compensation of over Rs.2,83,000/- as claimed in the claim petition. She submits that there is no award made for pain and sufferings. She submits that there is no award made for several expenses which the appellant has incurred. She submits that the disability incurred by the appellant was of permanent nature and which is in excess of 50%. For all these reasons, she submits that the appellant in the present case was required to be paid compensation of Rs.2,83,000/- as claimed.

4) Mr.M.K.Goyanka learned counsel for the respondent submits that in this case, the disability is taken at 50% and there is no infirmity on the part of the Tribunal on this point. He points out that the claims of income of Rs.2,000/- per month are highly exaggerated so he submits

that from the evidence on record, the income of the appellant was not more than Rs.1,000/- per month. He submits that the evidence is properly considered by the Tribunal and on the basis of it, the Tribunal has correctly recorded that the income of appellant was not more than Rs.1,000/- per month. Mr.Goyanka learned counsel submits that interest at the rate of 12% p.a. which is awarded is exorbitant. He submits that there is no merits in this appeal and the appeal is liable to be dismissed.

5) Rival contentions are now fall for determination.

6) As contended by Mr.Goyanka learned counsel for the respondent, there is really no infirmity on the part of the Tribunal in treating disability at 50%. The evidence of Doctor examined on behalf of the appellant/claimant as well as documentary evidence produced on record points out the disability is being 50% and not any greater.

7) However, when it comes to determination of income of the appellant, the Tribunal in the facts and circumstances of the present case was required to assess such income @ Rs.2,000/- per month and not merely Rs.1,000/- per month. There is ample evidence on record that the appellant was not only the owner of agricultural property ad-measuring to 15-20 Acres, further the appellant had a business, which was operated for sale of machinery. The appellant has deposed that he has engaged one employee and paying him Rs.500/- per month by way of salary. Taking into consideration both these factors, the income of the appellant was required to be taken as Rs.2,000/- per month and not merely Rs.1,000/- per month. To that extent the impugned Judgment and award warrants interference.

8) Since, the age of the appellant at the time of accident was 42 years, the multiplier will be 12, which

is the multiplier adopted by the Tribunal. Since, the disability in this case is assessed at 50%, the compensation will have to be determined on the basis of this. The appellant sustained loss of Rs.1,000/- per month or Rs.12,000/- per annum on account of accident and consequent injury, which he suffered therein. This means that compensation will have to be assessed as Rs.12,000/- x 12 = Rs.1,44,000/-. In addition, the Tribunal has awarded compensation of Rs.6,000/- towards hospital expenses and Rs.3,000/- towards miscellaneous expenses. This takes to total compensation figure of Rs.1,53,000/-. There is evidence that for some time, the shop was required to be closed. However, as there was an employee engaged by the appellant and there is no evidence that the employee was unable to manage the business for some limited duration, compensation of Rs.2,000/- can be awarded on this count. The appellant is also entitled to compensation of Rs.5,000/- towards pain and sufferings. This takes total compensation amount to Rs.1,60,000/-.

9) Towards closure of business and pain and sufferings, this Court has made the assessment on conservative basis because in this case, the appellant has been awarded interest @ 12% p.a., which is at the higher side. Therefore, both these aspects have set-up against each other.

10) The appeal is partly allowed. The compensation amount is enhanced to Rs.1,60,000/-. Rest of the award is maintained.

11) There shall be no order as to costs.

12) The respondent is directed to pay the enhanced compensation after taking the credits of the amount already paid, within a period of eight weeks from today.

13) The respondent to either pay the amount directly or

to deposit the amount in this Court, within a period of eight weeks from today. If the amount is deposited, the appellant is at liberty to withdraw the same unconditionally.

[M.S.SONAK, J.]