IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 250 OF 2011

Waman s/o Ramji Patil,
Age 61 years, Occ. Retired,
R/o. Savatkheda, Tq. Jamner,
District Jalgaon. … **Appellant**
(Original petitioner)

VERSUS

1) Shri. Prabhu Fulsing Rajput,
Age Major, Occ. Business,
R/o. Palaskhede (Pr.) Tq.
Jamner, Dist. Jalgaon.

2) Shri. Manoj Waman Patil,
Age 34 years, Occ. Agriculture,
R/o. Savatkheda, Tq. Jamner,
District Jalgaon.

3) The Branch Manager,
The United India Insurance Co.
Ltd., Jalgaon Office, Dist. Jalgaon.

4) The Branch Manager,
The New India Assurance Co. Ltd.
Jalgaon Office, Dist. Jalgaon.

5) Anil Bhagchand Pardeshi,
Age 38 years, Occ. Driver,
R/o. Palaskhede (Mirache)
Tq. Jamner, Dist. Jalgaon. **… Respondents.**

…

Advocate for the Appellant : Mr. A.M. Gholap.
Advocate for the respondent Nos. 1 & 5 : Mr. Vijay Y. Patil.
Advocate for respondent No. 4 : Mr. V.R. Mundada.

CORAM	:	**MANGESH S. PATIL, J.**
RESERVED ON	:	**26/11/2019.**
PRONOUNCED ON	:	**13/12/2019.**

JUDGMENT :

This is an appeal by the original claimant under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation.

2. Heard both the sides.

3. Admittedly, the owner and the Insurance Company of the offending vehicle have not preferred any appeal and consequently the question of negligence need not be gone into and the appeal falls in a narrow compass, as regards the quantum of the compensation determined by the Tribunal.

4. The facts in brief are to the effect that the applicant was riding pillion on a motor cycle of his son and was knocked down by a tractor owned by the respondent No. 1, insured with the respondent No. 3 and being driven by the respondent No. 5. As a result he sustained fracture to the right tibia fibula. He was treated by one Dr. Nahata who was an Orthopedician. An implant was fixed. He was again admitted in the hospital initially for removal of screws and subsequently for removal of the implant. The Medical Board of the Civil Hospital comprising of Civil Surgeon, Resident Medical Officer and Orthopedic Surgeon of Jalgaon issued disability certificate (Exhibit 51) certifying that the appellant suffered 10 % permanent disability.

He filed the petition under Section 166 of the Motor Vehicles Act. Hearing was conducted and by the impugned judgment and order the learned Member of the Tribunal allowed the petition as against the respondent nos. 1, 3 and 5 partly by assessing the compensation as under :

1) Medical expenses	:	Rs. 35,039/-
2) Pains and sufferings	:	Rs. 10,000/-
3) Special diet, attendants and other expenses	:	Rs. 10,000/-
Total		Rs. 55,039/-

The Tribunal Further awarded interest at the rate of 7.5 % p.a. from the date of the petition.

5. The learned advocate for the appellant vehemently submitted that in spite of there being an authentic disability certificate issued by the Medical Board certifying the disability to be 10 %, the Tribunal has grossly erred in not determining compensation in that respect even notionally. He submitted that the Tribunal got swayed away by the fact that the disability had not affected earning capacity of the appellant. The approach of the Tribunal was erroneous and is a clear deviation from the principles recognized by the Supreme Court. He would point out that in the case of ***Sandeep Khanuja Vs. Atul Dande & ano.; (2017) 3 Supreme Court Cases 351,*** it has been clearly laid down by the Supreme Court that even where the permanent disability does not

affect the earning capacity still compensation has to be assessed by applying multiplier method. To this extent the impugned judgment and award be modified and additional compensation under the head of permanent disablement be awarded.

6. The learned advocate for the respondent Nos. 1 and 5 i.e. the owner and driver of the tractor support the impugned judgment and award.

7. The respondent No. 3/Insurance Company has been duly served but has not appeared and therefore could not be heard.

8. It is apparent that the Tribunal has not at all awarded any thing on account of permanent disability suffered by the petitioner and even if it is assumed for the sake of arguments that it has not adversely affected earning capacity of the appellant, the Tribunal ought to have notionally awarded something under that head for the simple reason that as a result of injury sustained in the accident and having undergone a surgery or two, the appellant must have been wholly incapacitated to pursue his daily chores. The Tribunal has therefore committed illegality in not awarding anything under the head of permanent disability.

9. Be that as it may, in the case of *Sandip Khanuja (supra)*

wherein a Chartered Accountant had sustained a fracture and permanent disability, the Tribunal failed to award any compensation for the similar reasons, by holding that the disability had not affected earning capacity of the Chartered Accountant. The High Court in appeal held the claimant entitled to claim compensation but assessed the compensation in lump sum without resorting to multiplier method. The Supreme Court by referring to various decisions rendered by it earlier particularly in the case of ***Raj Kumar Vs. Ajay Kumar; (2011) 1 SCC 343,*** depending upon the age of the claimant, by ascertaining his income and applying the multiplier of 17, assessed the compensation under the head of permanent disability at Rs. 14,28,000/-.

In my considered view a similar course deserves to be adopted in the matter in hand in view of the decision in the case of *Sandeep Khanuja (supra)*.

10. It has been elicited in the testimony of the appellant that he was earning Rs. 10,000/- per month. He having suffered 10 % permanent disability and his age on the date of accident being 53, relying upon the decision in the case of **Smt. Sarla Varma and others Vs. Delhi Transport Corporation and another; (2009) 6 Supreme Court Cases 121,** and ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.; 2018(3) Mh.L.J. (SC) 70*** the suitable multiplier would be **11** and the

compensation under permanent disability comes to Rs. 1,32,000/-.

11. In the appeal-memo the appellant has requested to carry out the assessment of compensation under this head by stating that the loss of his monthly income should have been taken as Rs. 3000/- and the yearly loss would be Rs. 36,000/- and its 10 % i.e. Rs. 3600/- is to be multiplied by **11** multiplier and the compensation would come to Rs. 39,600/-. Obviously, there is an error committed by the appellant. If his monthly income was Rs. 10,000/-, the yearly income would be Rs. 1,20,000/-and for 10 % permanent disability by applying multiplier **11** it would be Rs.1,32,000/-. True it is that the compensation which is now being assessed is more than what has been claimed but it is a just compensation. The appellant is entitled to receive it.

12. The appeal is accordingly allowed with costs. In addition to the compensation awarded by the Tribunal the appellant is entitled to receive Rs. 1,32,000/- together with interest at the rate of 7.5 % p.a. from the date of petition i.e. 05.09.2007 till realisation of the entire amount of compensation. The appellant shall pay necessary court-fees on the amount by which the amount of award exceeds his claim.

(MANGESH S. PATIL, J.)

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