

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 965 OF 2018

Mangesh Laxmanrao Kaware,
Aged about 36 years, Occ.- Nil,
R/o Pardi, Tq. Karanja, Distt. Wardha.

.... **APPELLANT**

// VERSUS //

1. Manik Gulabrao Halade,
Aged about 45 years, Occ. - Driver,
C/o M.S.R.T.C. Divisional Office,
Amravati Division, Amravati.
Second Address
R/o Infornt of Randive's house,
Mata Mandir Ward, Hinganghat,
Tq. Hinganghat, Distt. Wardha.
(Driver of Offending Bus No.
MH-40-N-8722)
2. Divisional Controller,
Maharashtra State Road Transport
Corporation,
Divisional Office, Division Amravati,
Tq. And Distt. Amravati.

.... **RESPONDENTS**

Shri S.S. Alaspurkar, Advocate for appellant.
Ms. B.V. Reddy, Advocate for respondent no. 2.

CORAM : VINAY JOSHI, J.
CLOSED FOR JUDGMENT ON : 02/12/2019
JUDGMENT PRONOUNCED ON : 20/12/2019

Heard finally by consent of learned Counsel appearing for the parties at the stage of admission.

2. This is the claimants' appeal for enhancement of compensation amount. It is claimants' grievance that the Tribunal erred in holding low notional income at very low rate, and very less amount has been awarded on other heads.

3. The appellant-claimant while traveling by State Transport Bus bearing registration no. MH-40-N/8722 sustained permanent disablement as the Bus failed down. The claimant sustaining permanent disablement and involvement of offending vehicle in concerned accident is not in dispute. The only point for consideration is about the quantum of compensation.

4. It is claimants case that he was serving as Sales Officer with Mahafeed Specialty Fertilizers (India) Pvt. Ltd. and was earning salary to the tune of Rs.16,200/- per month. Neither the claimant has examined his employment nor documents regarding disbursement of salary have been produced. The Tribunal has rightly rejected the certificate of employer which was not proved during the course of

evidence. The claimant's age of 23 years and his employment as Sales Officer has not been denied. Since there was no acceptable evidence about income, the Tribunal held his notional income at the rate of Rs.3,000/- per month.

5. The appellant would submit that the Tribunal grossly erred in holding very low notional income which resulted into miscarriage of justice. It is appellants' case that Tribunal ought to have hold more notional income, in view of his vocation. In support of said contentions, the appellant relied on reported judgment in cases of **Syed Sadiq etc v. Divisional Manager, United India Ins. Co. reported in AIR 2014 SCC 1052** and **Ramchandruppa v. The Manager, Royal Sundaram Alliance Insurance Co. Ltd. reported in AIR 2011 SCC 2951**. In these cases notional income of the cleaner of lorry was held of Rs.5,000/- per month and the notional income of coolie was held of Rs. 4,500/- per month. In case at hand, claimant was working as sales officer, therefore, considering the existing price index and the nature of claimants job, the notional income can be reasonably held at the rate of Rs.5,000/- per month.

6. The claimant, sustained 20 per cent permanent

disablement in concerned vehicular accident. Disability certificate issued in form Comp.'B' is produced on record. The respondent would submit that said certificate cannot be construed as a substantive evidence and to that effect relied on reported judgment of Chhattisgarh High Court in the case of **Shatrughan Manjhuwar v.Santosh Yadav and ors 2012 (2) T.A.C. 59 (Chhattis)**. It reveals that, on perusal of medical case papers, orthopedic surgeon has assessed the disability to the extent of 20 per cent. Medical Officer expressed that patient was having difficulty in bending forward, standing for long time and in managing posture. The claimant sustained fracture at his spine as well as left leg knee. Considering the nature of injury there is no reason to doubt the percentage of disablement as certified by Medical Officer.

7. The Tribunal has awarded Rs.5,000/- towards medical expenses, Rs.2,000/- for special diet, Rs.5,000/- for pain and suffering and Rs.2,000/- towards conveyance charges. Certainly, considering the ailment and period of hospitalization, it needs to be enhanced.

8. The claimant sustained 20 per cent permanent disability of whole body therefore, it will affect his earning capacity. Though the appellant by placing reliance on the judgment in the case

of **National Insurance Company Ltd. v. Pranay Sethi and ors.** reported in **AIR 2017 SCC 5157** has urged to grant future prospects but considering the nature of injury, future prospect cannot be awarded. A claimant doing touring job would certainly face day to day difficulties, which would affect his mobility. The assessment of compensation under the head of loss of earning capacity would depend upon the effect and impact of such disability on his earning capacity. Considering the effect of disablement on a person doing marketing job, the loss of earning capacity would be to the extent of 25 per cent.

9. In sum and substance the, the claimants' entitlement is as follows :

1.	Use of multiplier of 18 (15000 x 18)	2,70,000/-	2,95,000/-
	Medical expenses	10,000/-	
	Special Died	5,000/-	
	Pain and Suffering	5,000/-	
	Conveyance Charges	5,000/-	
Total			2,95,000/-

10. In view of that impugned judgment needs interference to above extent. The appeal stands partly allowed. The judgment and award passed by the Tribunal is set aside. The appellant is entitled for

total compensation of Rs.2,95,000/- (inclusive of no fault liability) alongwith interest at the rate of 7.5 per cent per annum from the date of petition till full realization of the amount. The respondent shall deposit balance amount, on which the appellant is entitled to withdraw the same. The First appeal is disposed in above terms. No costs.

JUDGE

Later On :

The appellant is permitted to deposit deficit court fee within a period of two months from today.

JUDGE

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