

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

FIRST APPEAL NO. 876 OF 2004

Balaji @ Babu s/o Ambaji Kadam
Age: 19 years, Occ: Nil,
R/o Purna, Taluka Purna
District Parbhani

... Appellant
[Ori. Petitioner]

Versus

1. Kamalchand s/o Kesharchand Tated
Age: 35 years, Occ: Jeep Owner (MH-30-B-1078)
R/o. Ambedkar Chowk, Purna,
Taluka Purna, District Parbhani

2. The Oriental Insurance Company Ltd.,
Jalna through its Branch at
Daulat Building, Shivaji Road,
Parbhani

... Respondents
[Ori. Respondents]

....
Mr. V. P. Latange, Advocate for appellant
Mr. A. G. Kanade, Advocate for respondent No.2
....

CORAM : R. G. AVACHAT, J.

DATED : 07th OCTOBER, 2021

JUDGMENT :-

. This is an appeal for enhancement of compensation awarded on account of injuries and permanent disability suffered in an accident involving motor vehicles. The appellant – claimant claimed to have suffered 85% of the permanent disability. The

Tribunal after considering his claim, granted him compensation of Rs.70,000 (Rs. 40,000/- as non pecuniary damages and Rs.30,000/- towards medical expenses) with interest @ 9% p.a.

2. Most of the facts are not in dispute. The appellant – claimant along with his friends was travelling in a Jeep Tata Sumo MH-30-B-1078 on 10.05.2019. The Jeep met with the accident. The appellant-claimant suffered multiple injuries. He, therefore, filed petition for compensation.

3. Heard.

Learned Advocate for the appellant–claimant would submit that the appellant was 19 years of age when he met with the accident. He was serving as a Salesman with a grocery shop at a monthly pay of Rs/1,000/-. As a result of the injuries suffered in the accident, his left leg had to be amputated. He incurred medical expenditure over Rs.40,000/-. The amount of compensation of Rs.70,000/- awarded by the Tribunal is grossly inadequate. He, therefore, urged for enhancement thereof.

4. Learned Advocate for the respondent No.2 – Insurance Company would, on the other hand, submit that the author of the

disability certificate was not examined. There was no evidence to suggest loss of earning capacity. The Tribunal therefore was justified in awarding compensation at Rs.70,000/-. According to the learned Advocate, it is just and reasonable. Learned Advocate would further submit that the appellant – claimant had asked for compensation of Rs.3,00,000/-. He, therefore, cannot claim more than that. The learned Advocate therefore urged for dismissal of the appeal.

5. Learned Advocate for the respondent – Insurance Company relied on the judgment of the Apex Court in the case of *Rajesh Kumar Alias Raju Vs Yudhvir Singh and another – (2008) 7 SCC 305*.

6. Considered the submissions made by the learned Advocates for the parties. Gone through the relevant evidence. Perused the impugned award. In view of this Court, compensation granted by the Tribunal is grossly inadequate. The appellant – claimant testified on oath claiming to have had incurred little over Rs.40,000/- for medical treatment. He was indoor patient for about one month. The Civil Hospital, District Parbhani, issued him disability certificate (Exh.30) with his photographs affixed thereon. It is evident therefrom that left leg of the appellant has been

amputated below knee. He requires crutches to walk on. The percentage of disability was assessed at 85%. The employer with whom the appellant was serving, was examined as a witness. It is in his evidence that he would pay the appellant a sum of Rs.1,000/- per month, as salary. There is no reason to disbelieve the claim of the appellant.

7. The compensation on account of injuries and disablement suffered in the accident can be awarded under following heads.

	Pecuniary damages (Special damages)		Non-Pecuniary damages (General damages)
(i)	Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.	(i)	Damages for pain, suffering and trauma as a consequence of the injuries.
(ii)	Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising; (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability	(ii)	Loss of amenities (and/or loss of prospects of marriage).
(iii)	Future medical expenses	(iii)	Loss of expectation of life (shortening of normal longevity).

8. On appreciating the evidence in the matter, this Court is inclined to grant compensation as under:-

(i) Reimbursement of medical expenditure Rs.40,000/-

(ii) Due to amputation of leg and the nature of injuries suffered, the appellant must have been confined indoor, resulting into loss of earning of appellant for a period of six months. He is, therefore, awarded a sum of Rs.6,000/- on account of loss of earning.

(iii) On account of loss of earning capacity, he is awarded compensation applying multiplier method. His annual income is Rs.12,000/-. Considering his age being 19, multiplier of 18 would be applied (Rs.12000 X 18 = Rs.2,16,000/-, 85% thereof is awarded i.e. Rs.1,83,600/-). Although the appellant-claimant may undertake a sitting job.

(iv) On account of pain, suffering transportation, special diet, loss of amenities in life, a sum of Rs.1,00,000/- is awarded. Future medical treatment or for artificial leg (Jaipur foot), a sum of Rs.50,000/- is awarded. The calculations are as under:-

Rs.12,000 x 18	=	Rs.2,16,000/-, 85% thereof	=	Rs.1,83,600/-
Medical expenditure	Plus	=	Rs. 40,000/-	
Loss of earning for a period of six months	Plus	=	Rs. 06,000/-	
Loss of amenities in life	Plus	=	Rs.1,00,000/-	
Jaipur foot	Plus	=	Rs. 50,000/-	

		Total	=	Rs.3,79,600/-
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9. In view of the above, this Court is inclined to modify the impugned award with a view to increase amount of compensation awarded by the Tribunal.

10. In the result, the appeal partly succeeds. The same is partly allowed in terms of following order:-

ORDER

- (i) The amount of compensation awarded by the Tribunal is enhanced from Rs.70,000/- to Rs.3,79,600/-. The rate of interest is scaled down from 9% p.a. to 6% p.a.
- (ii) The amount of compensation in deposit with this Court or the Tribunal be paid to the appellant with interest accrued thereon.

[R. G. AVACHAT, J.]