IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2902 OF 2018

Rajendra s/o Murlidhar Warbade
Age 39 years, Occ: Driver & Agril.,
R/o. Pakhrud, Tq. Bhoom,
Dist. Osmanabad … **Appellant**
(Orig. Claimant)

Versus

1] Vilas s/o Nanasaheb Kawade
Age: 34 years, Occ: Business & Agri.,
R/o. Golandi, Tq. & Dist. Beed

2] Bhausaheb s/oBhanudas Zodage
Age: 46 years, Occ: Driver,
R/o Kanadighat, Tq. & Dist. Beed

3] The Manager,
Cholamandalam MS General Insurance
Co. Ltd., 21/4, Seth House, 2nd Floor,
Bund Garden Road, Pune – 411 001.
(Insurer of Ape 3 Wheeler Rickshaw
Registration No. MH-23/N-1601) … **Respondents**
(Orig. Respondents)

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Mr. D. A. Mane, Advocate h/f Mr. P. A. Bharat, Advocate for appellant
Mr. S. G. Chapalgaonkar, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

DATED : 11th AUGUST, 2021

PER COURT :-

. The original claimant is in appeal for enhancement of compensation granted to him on account of injuries and permanent disability suffered by him on account of accident involving motor vehicles.

2. FACTS:

The appellant was proceeding in Ape auto-rickshaw MH-23-N-1601 on 01.03.2012. It was about 5.30 p.m., the driver of the auto-rickshaw was driving it in rash and negligent manner. As a result, the rickshaw turtled. The appellant sustained head injury and fracture of backbone. His left hand was said to have become non functional.

3. The appellant, therefore, preferred Motor Accident Claim Petition (M.A.C.P.) No.125 of 2014, for compensation. The Tribunal awarded him a sum of Rs.3,00,000/- (Three Lakh) with 7.5% p.a. interest thereon. Having been dissatisfied with the quantum of compensation, the present appeal has been preferred. For award of compensation, the Tribunal considered the appellant's income as Rs.6,000/- per month. Disability certificate on record (Exh.38) indicates the appellant - claimant to have suffered 30% permanent disability in the nature of '*old, Head injury with fracture C 5, 6, 7 with Nerve-root compression with paraparesis left upper limb'.* The Tribunal considered 25% of permanent disability.

4. The Tribunal considered 25% of the appellant-claimant's monthly income of Rs.6,000/- as a monthly loss of income of Rs.1500/-. The annual loss comes to Rs.18,000/- and applying the multiplier of 15 thereto, a sum of Rs.2,70,000/- has been awarded towards loss of future income. Rs.20,000/- has been awarded towards medical expenses and Rs.10,000/- towards pain and suffering.

5. The learned Advocate for the appellant - claimant would submit that the multiplier of 16 should have been applied as the claimant was 35 years of age. According to him, no adequate compensation has been awarded under non pecuniary heads. The learned Advocate, therefore, urged for enhancement of compensation.

6. Learned Advocate for respondent No.3 – Insurance Company would submit that the multiplier has rightly been applied in terms of the Hon'ble Apex Court's judgment in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another – (2009) 6 SCC 121.***

7. According to the learned Advocate, there was no evidence regarding loss of earning capacity. The appellant might have suffered loss of income for a definite period. Although, award of compensation under non pecuniary heads appear to be lesser, the entire amount of compensation granted by the Tribunal is just and adequate. He, therefore, urged for dismissal of the appeal.

8. It appears that there is no much quarrel about the formula and the monthly income of the claimant considered for grant of compensation on account of loss of earning capacity. Suffice it to say that the Tribunal has rightly applied the multiplier of 15.

9. The Hon'ble Apex Court, in the case of ***Sarla Werma (supra)***, in para 21 of its judgment, has observed thus:

> "***21.*** *In Susamma Thomas (1994) 2 SCC 176, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032 per month. Having regard to the evidnece in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000 as gross income before deducting the personal living expenses.*"

10. The multiplier of 15 shall be applied in case of the age of the deceased or injured in the group of 36 to 40 years. The appellant claimed his age as 35 years at relevant time.

11. The accident took place on 01.03.2012. On the date of the accident, the appellant – claimant had completed 35 years of age. He was running 36. The Tribunal has, thus, rightly applied multiplier of 15. In view of this Court, the appellant, although suffered 25% of disability, has not suffered loss of earning capacity nor there is evidence to indicate him to have suffered loss of income except for definite period during which he was under treatment and could not report for duty. As such, in view of this Court the amount of compensation of Rs.2,70,000/- towards loss of earning capacity is on very higher side. This Court, therefore, proposes to set off the amount granted towards loss of earning capacity towards compensation on account of reimbursement of medical expenditure. After taking overall view of the matter, this Court is inclined to grant a sum of Rs.1,60,000/- more than one granted by the Tribunal. Considering the monthly income of the appellant at Rs.6,000/-, loss of income for a period of one and half (1 ½) years would come to Rs.1,08,000/-.

12. There are on record medical papers to indicate the appellant-claimant to have been indoor patient. He underwent an operation. There is certificate issued by "*Gitai Shushrushalaya and Laparoscopy Centre, Barshi*", certifying to have incurred medical expenditure to Rs.80,000/-. There are medicines purchase bills and other bills amounting to Rs. 2,18,758/-. The appellant – claimant, therefore, would be entitled for reimbursement of actual medical expenditure incurred.

13. As such, in my view, the appellant-claimant shall be entitled for compensation as under:

a) Loss of income for 1 ½ years (6000 X 18)	Rs. 1,08,000=00
b) Reimbursement of medical expenditure	Rs. 3,00,000=00
c) Pains, sufferings, special diet and conveyance	Rs. 52,000=00
Total	Rs. 4,60,000=00

14. This way, the amount of compensation to be granted to the appellant – claimant comes to Rs.4,60,000/-.

15. For the reasons given herein above, the impugned award is modified. A sum of Rs.3,00,000/- appearing in Clause -2 of the impugned award is replaced with Rs.4,60,000/-. Rest of the terms of the award to stand unaltered.

16. The First Appeal is disposed of accordingly.

[R. G. AVACHAT, J.]

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