

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

FIRST APPEAL NO.1364 OF 2017

Gulchand s/o Jaysingh Kotwal
Age 25 years, Occu. Nil,
R/o Balkheda, Tq. Kannad,
District Aurangabad

... APPELLANT

VERSUS

1. Bajrang s/o Gulchand Gomladu,
Age major, Occu. Business,
R/o Nevpur Balkheda, Tq. Kannad,
District Aurangabad

2. The Divisional Manager,
United India Insurance Co. Ltd.,
Mansingh Market, Station Road,
Jalgaon

... RESPONDENTS

.....
Shri N.J. Pahune Patil, Advocate for appellant
Shri S.V. Kulkarni, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

DATE : 20th AUGUST, 2021

J U D G M E N T :

This is an appeal under Section 173 of the Motor Vehicles Act (M.V. Act). The appellant herein was the original claimant in Motor Accident Claim Petition (MACP), No.112/2009. It was filed for compensation on account of

injuries and permanent disability suffered in an accident involving motor vehicle namely Truck No.MH-20/AA-8017. The Chairman, Motor Accident Claims Tribunal (MACT), Jalgaon, vide his judgment and award dated 6/10/2015, awarded a sum of Rs.3,00,000/- with interest @ 7.5% p.a.. Feeling to have not been adequately compensated, the present appeal has been preferred for enhancement of compensation.

2. Facts giving rise to the present appeal are as under :-

The appellant – claimant was travelling in ill-fated truck on 27/2/2009. It was his case that, he was employed as a Cleaner on the said truck. While the truck was passing via Chalisgaon, the truck driver lost his control over the truck and as a result, it dashed against a roadside pole. 3 – 4 inmates including the claimant suffered multiple injuries. The claimant was initially rushed to Dr. Pardeshi's Hospital and then was shifted to M.G.M. Hospital, at Aurangabad. He had been indoor patient for little over two and half months. His left leg had to be amputated. It was his case that, he was employed at a monthly pay of Rs.3000/-. He, therefore,

preferred the claim petition.

3. Learned counsel for the claimant would submit that, due to amputation of left leg of the claimant above knee, he has in fact suffered 100% functional disability as he was serving as a Cleaner. The Tribunal considered the functional disability at 30% and loss of future earning capacity at 20%. The claimant spent little over Rs.1,25,000/- towards medical expenditure. His prospects of marriage have been diminished. The compensation awarded by the Tribunal under various heads was grossly inadequate. He, therefore, urged for substantial enhancement in the amount of compensation.

4. The learned counsel for respondent Insurance Company would, on the other hand, submit that, the claimant was in fact travelling in the ill-fated truck as a fare paying passenger. He was, therefore, not entitled to claim any compensation from the Insurance Company. The amount of compensation awarded by the Tribunal is more than just and adequate. No interference with the impugned judgment and award is, therefore, warranted.

5. Considered the submissions advanced. Perused

the pleadings and evidence in the case. It was a goods carriage Truck No.MH-20/AA-8017 that met with the accident. The truck hit a roadside pole. The claimant was one of the inmates in the truck when it met with the accident. He claimed to have been serving as a Cleaner on the truck at a monthly pay of Rs.3000/-. The Tribunal accepted his case and calculated compensation considering it to be at 30% functional disability and loss of future earning capacity at 20%. Neither the owner of the truck nor the Insurance Company have taken exception to the impugned judgment and award. As such, the only question to be decided in this appeal is as to whether the claimant is entitled for enhancement in the amount of compensation.

6. The details of compensation awarded by the Tribunal are as under :-

Loss of earning	:	Rs.1,30,000/-
Reimbursement of medical expenses	:	Rs.70,000/-
Pain and sufferings	:	Rs.25,000/-
Loss of amenities	:	Rs.25,000/-
Loss of future prospects	:	Rs.50,000/-

Total	:	<u>Rs.3,00,000/-</u>

7. From perusal of the impugned judgment and award, this Court finds no convincing reason given by the Tribunal to assess functional disability at 30% and loss of future earning capacity at 20%. As such, the Tribunal has granted the claimant compensation considering it to be loss of earning capacity to the extent of 20% only. Since the driver of the truck did not hold effective and valid driving licence at the material time, the Tribunal directed the respondent Insurance Company to pay the amount of compensation and recover the same from the owner of the truck (respondent No.1).

8. The evidence indicates the claimant to have been indoor patient in M.G.M. Hospital, Aurangabad for about three months. He incurred medical expenses not less than Rs.70,000/-. The injury certificate Exh.34 indicates him to have suffered following injuries :-

Compound fracture to tibia and fibula

Vascular injury (w) - DP & PT pulses absent

Compound fracture - dislocation right ankle

CLW (Sutured) 5 cm. Near (w) eye.

9. While the disability certificate Exh.40 indicates him to have 45% of permanent disability, the disability certificate Exh.40 bears photographs of the claimant indicating his left lower limb had to be amputated above the knee. Admittedly, he was working as a Cleaner at a monthly pay of Rs.3000/-. It has just now become impossible for him to work on the truck as a Cleaner. True, he may undertake a job requiring less movement. In view of this Court, the Tribunal ought to have considered it to be a case of at least 75% of functional disability and that much amount of loss of earning capacity as well. This Court is, therefore, inclined to recalculate the compensation considering it to be a loss of 75% of earning capacity. As regards compensation awarded under other heads, the Court finds it to be just and adequate.

10. The loss of earning capacity is worked out as below :-

75% of Rs.3000 salary = Rs.2250 X 12 = Rs.27,000/- annual income. Rs.27,000 x 18 multiplier = Rs.4,86,000/-. Less Rs.1,80,000/- already calculated by the Tribunal (Rs.1,30,000/- on account of loss of earning and Rs.50,000/- awarded towards loss of future prospects) =

Rs.3,06,000/-.

11. In view of the above, the appeal succeeds in terms of the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.3,00,000/- to Rs.6,06,000/- (rupees six lakhs six thousand).
- (iii) Rest of the terms of the impugned award to stand unaltered.
- (iv) The amount of compensation be paid to the claimant immediately, even if the truck owner (respondent No.1) failed to furnish security in terms of clause (e) of the impugned award.

**(R. G. AVACHAT)
JUDGE**

fmp/-