

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.354/2010

Arvind Rajaram Nikhade,
aged about 55 years, Occ. Service,
r/o Balvant Colony, Near Mitra Nagar,
Kaulkhed Road, Akola, Tq. Dist. Akola.**APPELLANT**

...V E R S U S...

- 1 The Oriental Insurance Co. Ltd.
Akola, through its Divisional Manager,
Rayat Haveli, Old Cotton Market,
Akola, Tq. Dist. Akola.
2. Rameshwar Daulatrao Shinde,
Aged about adult, Occ. Tractor Owner,
r/o Warla, Tq. Dist. Washim.**RESPONDENTS**

Mr. C. A. Joshi, Advocate for appellant.
Mr. P. N. Khadgi, Advocate for respondent no.1.
Mr. A. A. Choube, Advocate for respondent no.2.

CORAM:- V. M. DESHPANDE, J.
DATED :- 28.10.2021

ORAL JUDGMENT

1. Heard Mr. Joshi, learned counsel for appellant,
Mr. Khadgi, learned counsel for respondent no.1 and Mr. Choube,
learned counsel for respondent no.2, owner of offending vehicle.

2. Cause for giving rise to the filing of the present appeal is judgment passed by learned Member, Motor Accident Claims Tribunal, Akola dated 08.12.2009 in M.A.C.P. No.233/2004. The appellant is Sectional Engineer. While proceeding for his official work to village Kumbhi on motorcycle bearing registration No. MH-30/C-5677, he met with an accident near village Pimpalgaon. The offending vehicle was tractor owned by respondent no.2 having registration No. MH-30/I-5259, which was duly insured with respondent no.1-Oriental Insurance Company Ltd. Due to accident, appellant suffered injuries and was required to be an indoor patient in various hospitals and he has suffered 20% permanent disability.

3. The appellant approached to the Claims Tribunal by filing claim petition under Section 166 of the Motor Vehicles Act. The said was registered as MACP No. 233/2004. In the said claim petition, appellant claimed Rs.10,00,000/- as compensation from respondent in the said claim petition. On being noticed, insurance company as well as the tractor owner appeared and filed their written statements. The common thread of their defence was that the appellant also contributed in the accident. In addition to the

said, it was the defence of the insurance company that the tractor driver was not holding license and therefore i.e. the breach of condition of the policy. Therefore, the insurance company is not liable for payment of compensation.

4. Parties went for trial. The appellant entered into witness box. He was thoroughly cross-examined. He also examined one witness Dr. Abhay Kashinath Patil, Orthopedic Surgeon as his witness. Nobody entered into the witness box for and on behalf of insurance company. However, respondent no.2 examined one Santosh Savant as witness. This Santosh Savant, at the relevant time, was driving the vehicle and by examining said Santosh Savant, respondent no.2 has, in fact, challenged the claim of insurance company that the driver was not holding the license.

5. After appreciation of the pleadings, documents and evidence, as brought on record the learned Member, MACT vide judgment and award dated 08.12.2009, partly allowed the claim put forth by the appellant. According to award, respondent nos.1 and 3 were held to be jointly and severally liable to pay compensation of Rs.3,34,000/- inclusive of interim compensation

under Section 140 of the Motor Vehicles Act. It was also observed by the learned Member of the Tribunal that the appellant will be entitled to claim interest at the rate of 9% p.a. in case insurance company and the tractor owner fail to deposit the compensation as directed within a period of 60 days.

6. Felt aggrieved thereby, appellant has filed present appeal. According to learned counsel for appellant, compensation granted to him is inadequate. On the other hand, learned counsel for the insurance company submitted that the tribunal has granted just and adequate compensation. Further, the respondents did not challenge the finding recorded against them.

7. In view of the rival submissions made before this Court, following points arise for determination.

Sr.No.	Points	Answer
1	Whether the compensation as awarded by Motor Accident Claims Tribunal in favour of the appellant is just and adequate?	In the negative
2.	What order?	As per final order

8. There is no dispute in this case that the appellant was discharging his duty as Sectional Engineer with Public Works Department, Sub Division, Mehkar, District Buldhana. From the impugned judgment itself, it is clear that the learned Member of the Tribunal has assessed the income of the appellant on the basis of his monthly salary as Rs.14,000/-, which is not seriously challenged. The learned Tribunal has granted compensation by considering 20% disability. While considering the income by 20% disability, the learned Member has not applied the multiplier which is seriously challenged before this Court. The law is well settled on this aspect. It would be useful to refer here the authoritative pronouncement of the Honb'le Court in **Sandeep Khanuja Vs. Atul Dande & anr.**; reported in **2017 (4) Mh. 1. J. 1.** Paragraph nos.12 and 13 thereof are as under:

"12. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. Recognition to this principle was given for the first time in the year 1966 in the case of Municipal Corporation of Delhi v. Subhagwanti & Ors. (1966) 3 SCC 649. Again, in Madhya

Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar & Ors., (1977) 3 SCC 64, the Court referred to an English decision while emphasising the import of this principle in the following manner:

“4. A method of assessing damages, usually followed in England, as appears from Mallet v. McMonagle, 1969 ACJ 312 (HL. England) is to calculate the net pecuniary loss upon an annual basis and to “arrive at the total award by multiplying the figure assessed as the amount of the annual ‘dependency’ by a number of ‘year’s purchase’ that is the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand...”

13. While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of U.P. State Road

Transport Corporation & Ors. v. Trilok Chandra & Ors.

(1996) 4 SCC 362 justified the application of multiplier method in the following manner:

“13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of ‘just’ compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.”

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases.”

9. In view of the aforesaid, in my view, learned Member, MACT has committed error in observing that since the learned Member is considering 20% disability, it is not necessary to apply multiplier in this case. Therefore, that finding needs to be upset in this appeal.

10. Similarly, the learned Member, in my view, has erred in not granting interest. The learned Member has granted 9% interest, if the insurance company or tractor owner fail to deposit awarded amount in the Court within 60 days. That itself shows

and speaks that the learned Member has disallowed the claim of the interest of the appellant. In my view, the appellant will be entitled for the interest also.

11. In view of the aforesaid, in addition to the amount what is already awarded in favour of the appellant, following amount will have to be awarded additionally.

*Rs.14,000/- salary per month X 12 Months =
1,68,000/- (-) 20% disability i.e. Rs. 8400/-. Rs.
8400/- will have to be multiplied by the multiplier.*

12. Now, what should be the multiplier in this case. As per Exh.-51, which is case summary, age of the appellant is recorded by the doctor as 49 years. Similarly, Exh.-52 is the certificate given by Vidarbha Neurosurgical and Spinal Institute, Akola. That also shows that age of the appellant in the year 2004 was 49 years. The appellant adduced his evidence in the year 2008 and that time he gave his age as 52 years.

13. In view of the documentary evidence in the nature of the certificates issued by the doctor, which is not challenged by

the insurance company, the Court can safely come to the conclusion that at the time of accident, the appellant was aged about 49 years.

14. In view of the law laid down by the Hon'ble Apex Court in Sarla Verma and Ors. .vs. Delhi Transport Corporation and anr. Reported in (2009) 6 SCC 121, the multiplier will be 13. Therefore, $8400 \times 13 = 1,09,200/-$. Thus, this is the amount for which the appellant will be entitled, in addition to the amount already awarded in appeal. Plus he will be entitled to interest at the rate of 7.5% p.a. on the amount which is already awarded by the Tribunal. Consequently, following order is passed.

ORDER

- (i) The appeal is partly allowed.
- (ii) Judgment and award dated 08.12.2009 passed in Motor Accident Claims Petition No. 233/2004 is set aside to the extent of not granting compensation by applying the principal of multiplier and not granting interest.
- (iii) The appellant will be entitled to receive compensation as granted by learned Member, Motor Accident Claims Tribunal, Akola. In addition to that, the appellant will be entitled to Rs.1,09,200/- and also interest at the rate of 7.5% per annum on the amount

already deposited. In addition to that, interest on Rs.1,09,200/- from the date of petition till its realization.

(iv) Statement of learned counsel of the insurance company is accepted that the insurance company will deposit the amount as granted in this judgment before the tribunal within a period of 2 ½ months from today.

After the amount is deposited, the appellant would be entitled to withdraw the same.

(v) Decree be drawn up accordingly.

JUDGE

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