

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

FIRST APPEAL NO.1145 OF 2008

Samdani s/o. Sattar Shaikh
Age 24 years, Occu. Nil,
R/o. Indira Nagar, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.

**.. Appellant
[Orig. Claimant]**

VERSUS

1. Jatinder Singh
Age major, Occu. Business,
R/o. KL-6A, Building No.3,
Room No.4, Sector 1E,
Kalamboli, Tq. Panvel
Dist. Raigadh [owner of truck
No. MH-06/K-5156]

2. National Insurance Co. Ltd.,
Navi Mumbai, through
The Divisional Manager,
National Insurance Co. Ltd.
Shubharai Towers, Datta Chowk
Solapur.

.. Respondents

...

Mr.R.V.Naiknavare, Advocate for the appellant
Mr.S.P.Chapalgaonkar, Advocate holding for
Mr.S.S.Chapalgaonkar, Advocate for respondent no.2

...

**CORAM : S.G.DIGE, J.
DATE : 11.08.2022**

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award dated 11.09.2007 passed by the Motor Accident Claims Tribunal, Osmanabad, the appellant [original claimant] has preferred this appeal for enhancement of compensation.

Brief facts of the case are as under :

2] On 21.06.2004 at about 3.30 a.m. the appellant [original claimant] was traveling in Luxury Bus No. MH-05/9891 on National Highway No.9. At the relevant time, the truck No. MH-06/K-5156 came from opposite direction in high speed. The driver of the truck was rash and negligent. The truck went on wrong side and gave dash to the luxury bus. Due to the said accident, the appellant sustained serious injuries. The crime was registered against the driver of the said truck.

3] The appellant filed claim petition for getting

compensation before the Motor Accident Claims Tribunal, Osmanabad [for short 'the Tribunal']. After considering the evidence on record and hearing the parties, the Tribunal has granted compensation. Against the said judgment and order, this appeal.

3] It is the contention of the learned counsel for the appellant that the appellant sustained serious injuries in the said accident and his right leg is amputated. The injuries sustained by him are evident from the discharge card and the medical papers produced on record but it was not considered by the Tribunal. The appellant is the Karta of the family. There is no male earning member in the family of the appellant. Due to accidental injuries and permanent disability, the appellant is unable to earn for himself and for his family. The appellant is unable to walk and unable to do any kind of work. The loss suffered by the appellant cannot be compensated in terms of money. There is 100% functional disability caused to the appellant due to the said accident. The Tribunal has not considered all these

facts and has granted meager compensation, hence, requested to allow the appeal.

4] It is the contention of the learned counsel for the respondents that the Tribunal has granted compensation on the basis of evidence produced by the appellant. The appellant failed to produce the evidence in respect of injuries suffered by him. No income proof was produced before the Tribunal by the appellant, hence, the order passed by the Tribunal is legal and valid. The learned counsel for the respondents submits that the interest awarded by the Tribunal should not be 7.5%, it should be 6%.

5] I have heard both learned counsel. Perused the judgment and award passed by the Tribunal. The appellant is seeking enhancement of compensation granted by the Tribunal. The Tribunal has granted compensation of Rs.60,000/-. The appellant has produced 60% disability certificate before the Tribunal. The Tribunal has admitted that the appellant has suffered 60% permanent disability

due to the said accident. In spite of that the Tribunal has granted compensation of Rs.60,000/-. It has come in the evidence of the appellant Exh.37 that he was fruit merchant and would earn Rs.7000/- per month. After accident, he is unable to do any work. In my view, the Tribunal has not considered that the right leg below knee of the appellant is amputated. The Tribunal has not applied multiplier while calculating the compensation. In cases of motor accidents leading to injuries and permanent disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The appellant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed. The appellant was 20 years of age at the time of accident. He has suffered serious injuries which has caused permanent disability to the extent of 60%. His right leg below knee is amputated. He was hospitalized from 22.06.2004 to 19.07.2004. On account of permanent disability, the appellant is not able to do his

business properly i.e. fruit merchant so there is 100% functional disability. It has come in the evidence of the appellant that he was fruit merchant and would earn Rs.7000/- per month. There is no evidence come on record to show that monthly income of appellant was Rs.7000/- as the appellant was fruit merchant. He is resident of village Naldurg. Hence, I am considering Rs.3,000/- per month as notional income of appellant. He was 20 years old at the time of accident, hence, multiplier of 18 is applicable. Considering above calculations, the appellant is entitled for following compensation :-

Head	Compensation amount
i] Notional income	Rs.3000/-
ii] Future prospectus [40% of income] by considering age of claimant	Rs.1800/-
iii] Net income	Rs.4800/-
iv] Multiplier as the appellant / claimant's age was 20 years	18
v] Loss of income 100% functional disability Rs.3000 x 12 = Rs.36,000/- per year Rs.36,000 x 18 = Rs.6,48,000/- Future prospectus Rs.1800/- p.m. x 12 = Rs.21,600/- p.a. Rs.21,600/- x M-18 + Rs.3,88,800/-	Rs.3,88,800/-

vi] Pain and suffering	Rs.1,00,000/-
vii] Medical expenses	Rs.1,25,000/-
Total compensation comes to	Rs.6,13,800/-
[Less] compensation awarded by the Tribunal	Rs. 60,000/-
Entitled for enhanced compensation	Rs.5,53,800/-

6] Though the Tribunal has awarded 7.5% rate of interest, however, in view of the judgment of Hon'ble Apex Court in the case of **Benson George Vs. Reliance General Insurance Company Ltd. & others** reported in **2022 SCC Online S.C. 238**, it should be 6% rate of interest, hence, I am considering the rate of interest at 6%.

7] In view of the above, I pass the following order:-

ORDER

i] The appeal is allowed.

ii] The amount of compensation is enhanced from Rs.60,000/- to Rs.6,13,800/-. The appellant is entitled to enhanced amount of Rs.5,53,800/- @ 6% from the date of filing claim petition till realization of amount.

iii] Respondent no.2 shall deposit the enhanced amount along with interest thereon within four weeks from the receipt of this order.

iv] The appellant is entitled to withdraw the deposited amount.

v] Appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

DDC