

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

FIRST APPEAL NO. 1184 OF 2021

Trimbak s/o. Limbaji Jadhav
Age.47 years, Occ. Agri.,
R/o. Majlapur, Tq. Purna,
Dist. Parbhani.

.. Appellant
[original claimant]

Versus

1. Pradeep s/o. Madhavrao Suryawanshi
Age. Major, Occ. Business,
R/o. Arajkheda, Tq. Renapur,
Dist. Latur.

.. Respondents
[original respondents]

2. The Ifco-Tokio General Insurance Co. Ltd.,
Through its Branch Manager,
Branch at 1st Floor, Innani Building,
Above Latur Saree Center, Old Cloth Lane,
Latur, Tq. & Dist. Latur.

Mr.Mahesh P. Kale, Advocate for the appellant.
Mr.S.G. Chapalgaonkar, Advocate for respondent No.2.

CORAM : ANIL L. PANSARE, J.
DATED : 06.07.2022

ORAL JUDGMENT :-

01. Heard Mr.Mahesh P. Kale, the learned Advocate for the appellant
and Mr. S.G. Chapalgaonkar, the learned Advocate for respondent No.2.

02. The appellant is aggrieved and dissatisfied with the judgment and award dated 7th May, 2019, passed by the learned Member, Motor Accident Claims Tribunal, Gangakhed, Dist. Parbhani, in MACP No.19 of 2014, thereby partly allowing the claim of the appellant. According to the appellant the Tribunal has erred in assessing the compensation.

03. Having heard both the sides, the controversy has been reduced to following two points :-

i) Whether the Tribunal was correct in assessing the functional disability of the appellant to the tune of Rs.3150/- per month?

ii) Whether the Tribunal was correct in reducing the claim to Rs.82500/- as against Rs.400000/- towards medical expenses and treatment?

. The answers to point No.(i) is in the negative and to point No. (ii) in the affirmative for the reasons to follow.

04. The appellant was doing agricultural work. His monthly income has been taken as Rs.4500/-. There is no dispute on the point of the notional

income considered by the Tribunal for calculation of compensation. There is further no dispute that the appellant has sustained 70% permanent disability due to imputation of right leg. The Tribunal, on the basis of the evidence of two Doctors (PW Nos.2 and 7) held that since the permanent disability was 70%, the functional disability for calculating the loss of income would also be 70%. This finding has been challenged by the appellant.

05. The learned Advocate for the appellant would argue that the appellant was doing agricultural work. His right leg was amputated. In the circumstances, though the permanent disability was to the extent of 70%, the appellant could not perform any agricultural activity. Therefore, the functional disability ought to have been taken as 100%.

06. The learned Advocate for the respondent-insurance company has supported the assessment of the Tribunal.

07. In my considered view, the findings recorded by the Tribunal is erroneous. The disability certificate Exh.73 would show that because of amputation of leg above knee, the permanent disability has been taken as

70%. This 70% permanent disability, if considered from the point of view of agricultural work/activity, the functional disability would definitely be 100%. One cannot really perform the agricultural activities with one leg. The Tribunal, therefore, ought to have considered the functional disability as 100% and in turn the Tribunal ought to have considered the monthly loss of income as Rs.4500/-. Consequently, the yearly loss of income would be Rs.54000/-. The Tribunal erred and therefore, was not correct in considering loss of monthly income as Rs.3150/- (70% of Rs.4500/-). Accordingly, point No.(i) is answered in the negative.

08. On the point of medical expenses, the learned Advocate for the appellant submits that the appellant has led evidence and stated on oath that he incurred medical expenses of Rs.4 lakhs. The Tribunal found that hospital bills/vouchers worth Rs.50,000/- were placed before it and proved as Exh.63. Similarly, the blood purchase receipt Exh.67 amounting to Rs.4500/- and the expenses towards pathological test for Rs.6000/- were proved. Similarly, the medicine purchase vouchers amounting to Rs.22,000/- were placed before it and were proved. Therefore, the Tribunal allowed the claim of Rs.82500/- towards the hospital and medicine charges.

09. The learned Advocate for the appellant made an attempt to convince the Court that it is practically difficult to get documents of expenses towards treatment. However, he failed to point out any such expense, over and above what has been granted, made towards treatment. In absence of the same, the learned Advocate for the respondent-insurance company is correct in contending that the documents towards medical treatment as proved before the Tribunal have been rightly considered and the Tribunal has correctly awarded Rs.82500/- towards treatment and medical expenses. The point No. (ii) is accordingly answered in the affirmative.

10. The sum and substance of above discussion is that the appellant is entitled for loss of income to the tune of Rs.4500/- per month. He was 44 years old at the time of the accident. Therefore, the multiplier for the purpose of calculation of loss of future income would be 14 in terms of settled position of law. At this stage, the learned Advocate for the appellant has referred to the judgment in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680**, wherein the Apex Court held in para 55 that the future prospects for all categories of persons namely, persons who are in

permanent job, who are self-employed or have fixed salary is admissible. Where a deceased is below 40 years and is self-employed, an addition of 40% of the established income of the deceased towards future prospects is reasonable. Where the deceased is between 40 to 50 years, an addition of 25% of the established income, is reasonable.

11. The learned Advocate for the petitioner has then referred to the judgment of the Apex Court in the case of Syed Sadiq and Ors. Vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, in support of his argument that claim of the future prospects is admissible in injury claims as well. The Apex Court granted 50% increment towards future prospects in the said case where the injured, who suffered 85% permanent disability at the age of 24 years.

12. Thus, taking aid of aforesaid ruling, in the present case, the appellant being 44 years of age, he would be entitled for additional 25% of the established income towards future prospects. The loss under conventional heads, has already been considered and granted by the Tribunal.

13. Thus, the compensation could be calculated as under :-

Notional Income	=Rs.4500/- pm
Annual Income	=Rs.4500x12=Rs.54000/-
Loss of earning capacity 100%	=Rs.54000/-
25% addition towards future prospects	=Rs.54000+Rs.13500=Rs.67500
Multiplier of 14	=Rs.67500/-x14=Rs.945000/-
Medical Bills	=Rs.82500/-
Pains and sufferings	=Rs.50000/-
Loss of amenities	=Rs.75000/-
Transport charges	=Rs.20000/-
Total compensation	=Rs.1172500/-

14. The learned Advocate for the respondent-insurance company has relied upon judgment in the case of **Dharampal & Ors. Vs. U.P. State Road Transport Corp., 2008(12) SCC 208**, in support of his argument that the rate of interest upon the amount of compensation granted would normally be relatable to the bank rate prevailing at the relevant time. The Apex Court in the said case awarded interest at the rate of 7.5%. However, the Apex Court has referred to certain judgments, which shows that in some cases, interest at the rate of 9% per annum was granted.

15. Recently, the Apex Court in the case of **R. Valli & Ors. Vs. Tamil Nadu State Transport Corporation Ltd., in Civil Appeal No.1269 of 2022**

awarded interest at the rate of 9% p.a. from the date of filing of the claim petition till realization. In the said case, the High Court had granted interest at the rate of 7.5% p.a. Thus, there is no straight jacket formula in this regard. The Tribunal thought it proper to award 9% interest per annum. There appears no reason to modify the said rate of interest. The submissions made by the learned Advocate for the respondent-insurance company for reduction of interest is accordingly rejected.

16. Thus, the appeal is partly allowed. The respondents are jointly and severally responsible to pay compensation of Rs.11,72,500/- (Rupees Eleven Lakhs Seventy Two Thousand Five Hundred Only) along with interest at the rate of 9% per annum from the date of filing of the claim in the Tribunal till its realization. The amount be paid within eight weeks from the date of receipt of copy of award.

[ANIL L. PANSARE,J.]