IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.249 OF 2003

Santosh s/o Baburao Aasaware,
Age .19 years, Occ. Cleaner,
R/o : Ekhure, Tal. Kopargaon,
Dist. Ahmednagar.

… APPELLANT
(Ori. Claimant)

VERSUS

1. Dinkar s/o Yashwant Bewke,
Age .35 years, Occu. Business,
R/o : Sakuri, Tal. Kopargaon,
Dist. Ahmednagar.

2. Branch Manager,
The New India Assurance Co.Ltd.,
Abat Building, Zendigate,
Ahmednagar.

... RESPONDENTS
(Ori.Opponents)

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Advocate for the Appellant : Mr. Sanket S. Kulkarni
Advocate for Respondent No. 2 : Mr. S. G. Chapalgaonkar
Appeal against Respondent No. 1 dismissed as abated vide order dtd.07.12.2021.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 12.09.2022
PRONOUNCED ON : 07.10.2022

JUDGMENT :

The appellant -claimant has filed this appeal challenging the judgment and award dtd. 08.05.2002 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred to as the 'learned Tribunal') in Motor Accident Claims Application No. 362/1996 on the ground that the learned Tribunal did not properly assess the compensation which needs to be enhanced in this appeal.

2. It is apparent from record that on 27.01.1996 at about 03.00 p.m. the appellant was occupant of truck No. MHS 6644 as a cleaner and going from Nagar to Rahuri side. After passing Sina river bridge on Nagar-Manmad road, the driver of the said truck lost control of it due to high speed and therefore, the truck turned turtled and in the accident the appellant -claimant sustained fracture injury. The appellant was admitted to Hospital for about one and half month and had to spend amount of Rs. 70,000/- towards his medical treatment. As such, he had filed the aforesaid claim petition for getting compensation to the tune of Rs. 2,00,000/- from the present respondents, who are the owner and insurer of the offending truck respectively.

3. During the pendency of this case, the owner of the offending vehicle -respondent No.1, died and the appeal against him was abated.

4. The learned Tribunal, after going through the evidence assessed the amount of compensation to the tune of Rs. 1,00,000/- inclusive of 'No Fault Liability' amount and also awarded 9% per annum interest amount on the said amount from the date of petition till its realization. Hence, this appeal.

5. The learned counsel for the appellant-claimant, in addition to submissions at bar, has also filed written notes of argument and relied on the following judgments are as under :-

(i) Raj Kumar Vs. Ajay Kumar & Others, (2011)1 SCC 343,

(ii) Akshay Vs. Kailas Vitthalrao Shinde and Others, 2022(3) Bom CR 683,

(iii) Pappu Deo Yadav Vs. Naresh Kumar and Others, AIR 2020 SC 4424,

(iv) Jakir Hussein Vs. Sabir and Others (2015) 7 SCC 752,

(v) Mohan Soni Vs. Ram Avtar Tomar & others.

6. The learned counsel for the appellant submits that the learned Tribunal has not properly assessed the amount of compensation. He further submits that since the appellant sustained compound III type injury and was disabled to the extent of 40% due to the accidental injuries, he suffered 100 % loss of earning capacity and therefore, the

learned Tribunal, by relying on the judgments mentioned (supra), should have assessed the compensation to the tune of Rs. 7,53,600/- as per the calculations below on various heads in the light of observations of judgments relied upon :-

HEAD	COMPENSATION TO BE AWARDED
Income	Rs.1,500/- Per Month
Future Prospectus at 40%	Rs. 600/- Per Month
Total Per Month	Rs. 2,100/-
Net 2100*12 Months	Rs. 25,200/- Yearly Income
Multiplier	18
Total 25,200*18	Rs. 4,53,600/-
Pain and Suffering	Rs. 1,00,000/-
Loss of happiness, amenities, entertainment of life	Rs. 1,00,000/-
Loss of marriage prospect	Rs. 1,00,000/-
Total	Rs. 7,53,600/-

7. On the contrary, the learned counsel for respondent No. 2 - Insurance Company strongly opposed the submissions made on behalf of the applicant and supported the judgment of the learned Tribunal. He further submitted that the learned Tribunal has assessed the compensation amount at higher side by considering the income of appellant without there being any supporting document. Further, nothing is there on record to show that the appellant had to leave the job after the accident. He also pointed out that the disability shown in the Certificate (Exhibit 39) to the extent of 40% is also not proper

and the learned Tribunal should have taken it only to the extent of 13% to 14%. He further submitted that the judgments relied upon by the applicant claimant cannot be applied as straight jacket formula since the compensation is to be assessed on the basis of facts of each case.

8. With the able assistance of learned counsel for the contesting parties, I have gone through the impugned judgment as well as the record and proceedings of the aforesaid claim petition.

9. Admittedly, the learned counsel for respondent No.2 -Insurance Company has not disputed the liability of company to pay the compensation. The appeal is filed only for enhancement of the compensation by the appellant -claimant on the ground that after sustaining 40% disability due to the injuries sustained in the accident, the claimant suffered 100% loss of earning and therefore, there was no necessity to deduct disability percentage or deduction in monthly income while assessing the injury claim. The appellant is also seeking addition of future prospects while assessing the compensation amount in the light of subsequent judgments as relied upon. However, the enhancement as claimed by the claimant -appellant is based on the presumption that he lost 100% of his earning capacity,

but the evidence on record indicates otherwise.

10. The appellant -claimant has contended that as he was earning Rs. 1500/- per month as a cleaner and was of 19 years of age therefore the amount of compensation should have been assessed to Rs.3,24,000/- i.e. (18,000 X 18) by applying the multiplier 18. However, this compensation would have been proper had the claimant lost his life in the accident. The appellant has only sustained disability and therefore, the compensation needs to be assessed by considering pecuniary damages and non pecuniary damages as referred in the judgments relied upon by the appellant.

11. On going through the impugned judgment, it appears that the learned Tribunal has assessed the amount of compensation as follows :

1) Personal suffering and loss of enjoyment of life.	..	Rs. 30,000 -00
2) Factual pecuniary loss resulting into medical expenses, conveyance.	..	Rs.30,000 -00
3) Future loss of income	..	Rs. 40,000-00
TOTAL	..	Rs. 1,00,000-00

12. On going through the evidence on record, it is clearly evident that the claimant was only able to file the bills of medical expenses of

Rs. 23,000/- as per Exhibit Nos. 40 and 41. However, it appears that the learned Tribunal has added Rs.7000/- to that amount on account of travelling charges which definitely appear proper. Further, the learned Tribunal has awarded amount of Rs. 30,000/- under the head of personal suffering and loss of enjoyment of life.

13. It is significant to note that Dr. Dilip Shirsath i.e. second witness of the appellant, who had treated him, has specifically stated in the cross-examination that there was only one fracture injury to the appellant -claimant. Moreover, the appellant himself has admitted in his cross-examination that he was able to walk without taking any help. When these two statements are considered conjointly, then an irresistible inference can be drawn easily that the amount granted by the learned Tribunal under the head of personal suffering and loss of enjoyment life is more than sufficient.

14. Now, I consider the compensation under the head of future loss of income. Admittedly, the learned Tribunal has not given any reason or calculation as to how the compensation amount of Rs. 40,000/- under the said head is assessed. For this purpose, the observations of Honourable Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar*** *(supra)*, may be helpful. The compensation under the aforesaid head

of loss of future income needs to be assessed by considering the multiplier method and a percentage of disability. The learned counsel for the appellant insisted for not to assess the loss by considering the percentage of disability and without further deduction of personal expenses presuming that the appellant – claimant lost his 100% capacity to earn. However, the appellant himself before the learned Tribunal has admitted that he was able to walk without any support. Moreover, there is nothing on record to show that he is sitting completely idle, after the accident and lost his working capacity to the extent of 100%. Further, his second witness Dr. Dilip Shirsath has also given vital admission in his cross-examination mentioning that he had assessed 40% loss of working capacity of the appellant only because he was unable to walk without support at the relevant time i.e. in the year 1996 when the Disability Certificate (Exhibit 39) was issued. Dr. Dilip Shirsat has further admitted clearly that the appellant never visited his hospital for taking treatment after 1997. If these admissions are considered with the admission of appellant that he is now able to walk without any support, then a clear inference can be drawn that the working capacity of the appellant was not hampered 100% after the accident. On the contrary, over the period of time, the working capacity must have been increased which was 40% less after the accident. Thus considering the future recovery, it can safely be inferred that the working capacity of the appellant has been hampered only by 20% in current situation. Therefore, by applying the appropriate multiplier of 18 and considering the percentage of disability to the extent of 20% compensation under the head of future loss of income comes to Rs. 64,800/-. It is important to note that the learned Tribunal has assessed only Rs.40,000/- under the aforesaid head and therefore, only that part needs to be enhanced. The compensation which the appellant has assessed is calculated by presuming that he lost his 100% working capacity. However, that has been falsified by the evidence on record. It cannot be imagined that after the accident and by sustaining only thigh fracture, the appellant remained at home for rest of his life. In view of the same, I assess the compensation of the claimant as follows :

(1)	Personal suffering loss of enjoyment of life	Rs.30,000/-
(2)	Factual pecuniary loss resulting into medical expenses and conveyance	Rs. 30,000/-
(3)	Factual loss of income	Rs. 64,800/-
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	Total	Rs. 1,24,800/-
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15. Thus, the only modification is required in the amount under the head of future loss of income. Moreover, since we are enhancing the amount in the year 2022 wherein the prevailing rate of interest is only 6% per annum, the rate of 9% per annum for the enhanced

compensation amount would be appropriate considering the prevailing rate of interest in the year 2002.

16. In view of the above, following order is passed :

O R D E R

(i) The appeal is partly allowed.

(ii) The appellant -claimant is entitled to get compensation of Rs. 1,24,800/- (Rupees One Lakhs Twenty Four Thousand Eight Hundred only) inclusive of award of Rs. 50,000/- (Rupees Fifty Thousand only) under Section 140 of Motor Vehicles Act under the principle of 'No Fault Liability' along with interest @ 9% per annum from the date of petition till its realization from respondent No.2 -Insurance Company.

(iii) Respondent No. 2 shall pay the balance amount of compensation within three months from the date of this order along with proportionate interest there on accrued from the date of petition till its realization, directly in concerned MACT, Ahmednagar.

(iv) The appellant – claimant shall pay the deficit court fees, if any in respect of additional amount of compensation allowed under this judgment within two weeks from the date of computation of such additional court fees.

(v) The appellant – claimant is entitled to withdraw the aforesaid enhanced compensation amount along with accrued interest as and when deposited.

(vi) The appeal is disposed of accordingly.

(**SANDIPKUMAR C. MORE**)
JUDGE

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shp/-