

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

FIRST APPEAL NO. 14 OF 2004

Jawed Khan S/o Mahmood Khan
Age about 30 years, Occ : at present Nil,
R/o Karim Colony, Roshan Gate,
Aurangabad. **..APPELLANT**
(Original Claimant)

VERSUS

1. Ramnarayan S/o Papalal Jaiswal
Age : Major, Driver Owner of the
Jeep R/o Bharadi, Tq. Sillod,
Dist. Aurangabad.
2. Dattulal S/o Motilal Savaiwala
Age : Major, Occ : Business,
Transportation, R/o Sarafa,
Aurangabad.
3. Oriental Insurance Co. Ltd.,
Adalat Road, Aurangabad. **..RESPONDENTS**
(Original respondents)

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Advocate for Appellant : Mr.A.P. Bhandari
Advocate for Respondent No.3: Mr. Dhanajay Deshpande

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CORAM : S.G.DIGE, J.
RESERVED ON : 20.09.2022
PRONOUNCED ON : 13.10.2022

JUDGMENT :

By this appeal, the appellant is seeking
enhancement of compensation.

2. It is the contention of the learned counsel for

the appellant (for short, “the claimant”) that due to accident, the claimant has sustained serious injuries to his head, jaws and on his left eye. Technical and specialist treatment was required to be taken by the claimant from Ophthalmologist and Dentist. Despite the prolonged treatment the claimant is not completely cured. He suffered permanent disability of 41%. He has caused 100% functional disability, but this fact has not been considered by the Tribunal. The learned counsel further submits that the future prospects are not awarded to the claimant. The multiplier is also not applied while awarding the compensation. Hence requested to allow the appeal. The learned counsel relied upon the judgments in the case of *National Insurance Company V/s Pranay Sethi* reported in *2017(16)SCC 680*, *Pappu Deo Yadav Vs Naresh Mukar and others* reported in *AIR 2020 SC 4424*, *Sandip Khanuja Vs Atul Dande and others* reported in *2017(3) SCC 351*, *Rajkumar Vs. Ajaykumar* reported in *2011(1)SCC 343* and *Sarla Varma Vs. Delhi Transport Corporation and others* reported in *2009 AIR SCW 4992*.

3. It is the contention of the learned counsel for the respondent no.3 that the disability certificate produced before the Tribunal was of 41%. On that basis, the Tribunal has calculated the compensation, which is just and proper. The Tribunal has considered all the aspects while awarding the compensation. When there is disability certificate of 41% then 100% functional disability cannot be considered. The award passed by the Tribunal is legal and valid.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

5. The claimant is seeking enhancement on the ground that he has suffered 100% functional disability, no future prospects are awarded nor multiplier is applied.

6. To prove the disability, the claimant has examined himself at Exhibit-61. He has stated that he sustained the crush injury to his left eye. His eye orbit as well as eye ball both are damaged. He also sustained injury in the nature of fracture of maxilla. The injury certificate is at Exhibit-68. Due to crush injury to his left eye, he was

required specialised treatment and for this, he has taken treatment from Dr. Malani and Dr. Patwardhan. Nothing is elicited in cross examination of this witness.

7. To support evidence of claimant, Dr. Satish Karandikar is examined at Exhibit-75. He has stated that he treated the claimant on urgent basis. Claimant was admitted in Dr. Mahajan's hospital. During treatment, he was operated by this witness. Some dental treatment was given to claimant. This witness has further stated that, considerable amount has been spent by the claimant on his treatment and claimant has spent the amount of Rs.35,000/- on his treatment. The claimant has lost his left eye vision completely. On account of injury to his jaws, he is not able to open his mouth and cannot eat solid food.

8. PW-3 Dr. Mahajan has stated that the claimant was admitted in his hospital. From the evidence of claimant and medical experts, it reveals that claimant is not able to walk for longer distance. He suffers from giddiness, claimant is not able to chew properly due to injury

sustained to jaw. He has lost eye sight of left eye. He was driver but due to accident he has lost his left eye completely, he can not do driving so there is total loss of earning capacity of claimant. Though, there is disability certificate of 41% but it is 100% functional disability. As per the view taken by the Hon'ble Apex Court in the case of ***Sandeep Khanuja Vs. Atul Dande and anr. (supra)***, I am considering the disability of claimant as 100% functional disability.

9. The Tribunal has not awarded future prospects and has not applied the multiplier while awarding the compensation. The Hon'ble Apex Court in the case of ***Pappu Deo Yadav Vs Naresh Kumar and others (supra)*** held that loss of future prospects @ 40% should be considered while awarding the compensation. The Hon'ble Apex Court in the case of ***Sandeep Khanuja Vs. Atul Dande and anr. (supra)***, has held that the multiplier should be applied while awarding the compensation.

10. In view of the above, the appellant is entitle for following compensation :-

Sr. No.	Head	Compensation awarded
1.	Income	Rs.2,200/- per month
2.	Future prospect (40% of income considering age of claimant)	Rs.800/-
3.	Net Income	Rs.3,080/-
4.	Multiplier	17
5.	Loss of Income 100% functional disability 3,080 X 12 = Rs.36,960/- per year 36,960/- X 17	Rs.6,28,320/-
6.	Pain and suffering	Rs.50,000/-
7.	Total Compensation	Rs.6,78,320/-
8.	Less amount already granted by the Tribunal	Rs.1,35,000/-
The Tribunal has awarded Rs. 1,35,000/- The compensation amount - Rs. 6,78,320/- as calculated by this Court ===== Appellant is entitle to enhanced amount Rs. 5,43,320/-		

11. 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.1,35,000/- to Rs.6,78,320/-. The appellant is entitle to enhanced amount of Rs.5,43,320/- @ 6% from the date of filing claim petition till realization of amount.

(iii) The respondents are directed to deposit enhanced amount along with interest within 12 weeks.

(iv) The appellant is permitted to withdraw the deposited amount.

(v) The appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-