

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

FIRST APPEAL NO. 1430 OF 2019

Tata A.I.G. Insurance Company Ltd.,
Through its Manager/Authorized Signatory,
Mondha Naka, Near Kotak Mahindra Bank,
II Floor, Jalna Road, Aurangabad

... **Appellant**
(Orig. Resp.No.2)

Versus

1. Prashant Vitthal Thorat
Age: 37 years, Occu. Labour Work,
R/o. Hiware Korda, Tal. Parner,
Dist. Ahmednagar
2. Amit Gopaldasji Khandelwal
Age: 42 years, Occu. Transport,
R/o. 155, Transport Nagar, Indor,
Madhya Pradesh

... **Respondents**

....

Mr. S. S. Dargad, Advocate h/f Mr. S. G. Chapalgaonkar, Advocate for
appellant
Mr. A. C. Darandale, Advocate for respondent No.1

....

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 20th DECEMBER, 2021
PRONOUNCED ON : 22nd FEBRUARY, 2022**

J U D G M E N T :-

. This is an Insurance Company's appeal taking exception to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Ahmednagar (Tribunal), in Motor Accident Claim Petition (M.A.C.P.) No. 505 of 2016 on account of injuries and

permanent disability suffered in vehicular accident. Under the impugned judgment and award, the respondent No.1 (claimant) was awarded compensation of Rs.9,80,000/- with interest @ 9% p.a. on account of 40% of permanent disability.

2. The facts giving rise to the present appeal are as follows:

The claimant along with his relations, was travelling from Nashik to Pune via Shirdi in a car bearing No. MH-12-CD-4265. While the car was passing by Rahata town, a truck bearing No.MP-09-HF-7096 coming from opposite side, dashed against the car. As a result, the claimant suffered multiple injuries. He was rushed to Saibaba Hospital, Shirdi. He was indoor patient there from 26.05.2014 to 11.06.2014. He was shifted to Sancheti Hospital, Pune, for better treatment. The truck driver was charge-sheeted for being responsible to the accident.

3. The Tribunal, on appreciation of the evidence in the case, granted compensation under various heads.

4. Heard.

The learned Advocate for the appellant - Insurance Company would submit that exorbitant compensation has been awarded. There was no concrete evidence about monthly income of

the claimant. There was also no evidence as regards loss of earning capacity. In injury claim, no compensation on the ground of loss of future prospects could be awarded. It is granted in case of death claim or 100% loss of earning capacity. The learned Advocate, therefore, urged for allowing the appeal with reduction in the amount of compensation.

5. The learned Advocate for the claimant would, on the other hand, submit that in the facts and circumstances of the case, the amount of compensation granted by the Tribunal is on lower side. He urged for enhancement of compensation. According to him, just and reasonable compensation should have been granted. It was the duty of the Tribunal to grant just compensation even if found that the compensation awarded is not just and reasonable. The appellant Court has every jurisdiction to enhance the same if it is there being no appeal or cross objection preferred by the claimant for enhancement. The learned Advocate has relied on the judgment of this Court in the case of *Divisional Manager, Oriental Insurance Company Limited Vs. Santoshkumar Parmanand Akhar (Kapur) and others* , - *First Appeal No.655 of 2010* (Nagpur Bench), decided on 09.12.2021.

6. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations placed on record.

The factum of accident is not in dispute. The finding that the accident took place due to rash and negligent of driving by the driver of the truck is also undisputed. The question is only of quantum of compensation awarded. The disability certificate (Exh.30) suggests the claimant to have suffered 40% of disability of the following nature.

On clinical and radio-logical examination, patient has :

- “(1) Left humerus # (fracture) malunion with implant in place. Patient has difficulty in lifting hand high and shoulder and elbow movement restriction. (15% fifteen).
- (2) Right 3rd PP Hand Malunion # (fracture) with weak grip (10% ten).
- (3) Facial multiple bones # (fracture) with implant in place. Patient has difficulty in chew and open of mouth (15% fifteen).

Total permanent disability of 40% (forty) percent only.

7. It has been admitted in the evidence of Dr. Sunil. Admittedly, Dr. Sunil had not attended the claimant. The disability certificate has been issued after going through the medical papers and clinical examination.

Dr. Sunil has admitted that some fractured injuries sustained by the claimant were united and some were in the process to unite. The un-united fractures are likely to be united. He did not assess loss of earning capacity.

8. It was the case of the claimant that he was working on daily wages. He, however, did not give concrete evidence about rate of daily wages. The Tribunal, therefore, considered his monthly income at Rs.6,500/-. The accident took place in May - 2014.

9. The details of compensation awarded by the Tribunal are as under:

(i)	On account of loss of earning capacity	Rs. 4,99,000/-
	(Per month income	Rs. 6,500/-
	40% thereof comes to	Rs. 2,600/-
	Annual comes to	Rs. 31,200/-
	Applying multiplier of 16, it comes to	Rs. 4,99,200/-
	rounded upto	Rs. 4,99,000/-)
(ii)	On account of medical expenses	Rs. 1,26,000/-
(iii)	Transportation, special diet etc.	Rs. 30,000/-
(iv)	Pain and sufferings	Rs. 75,000/-
(v)	Future prospects	Rs. 2,50,000/-

10. It is reiterated that there is, in fact, no evidence of loss of earning capacity. Considering the nature of injuries and evidence in the case, this Court does not propose to interfere with the quantum

of compensation awarded on account of medical expenditure, pain and sufferings, diet and transportation etc. In spite of there being no loss of earning capacity, the Tribunal granted a sum of Rs.4,99,000/-. Considering the nature of the injuries suffered by the claimant, I do not propose to interfere with this quantum as well. In view of this Court, the Tribunal ought not to have granted Rs.2,50,000/- towards future prospects when there was no concrete evidence about income of the deceased and loss of earning capacity as well. In the facts and circumstances of the case, grant of Rs. 2,50,000/- is found to be unreasonable. To that extent, interference is warranted. Although the Court may have power to enhance compensation to make it just and reasonable even though the claimant had not filed appeal or cross objection in that regard, it is found that the amount of compensation awarded by the Tribunal is exorbitant to the extent of Rs.2,50,000/-.

11. In the result, the appeal succeeds. The same is allowed in terms of following order:

ORDER

- (i) The award dated 29.11.2018, passed by the Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No. 505 of 2016 is hereby modified reducing the amount of compensation from Rs.9,80,000/- to Rs. 7,30,000/-.

- (ii) Clause (3) of the impugned award, directing for keeping the amount of compensation in fixed deposit for (5) five years, is withdrawn.
- (iii) The amount of compensation in deposit with this Court, be paid to the claimant in terms of the modified award along with interest accrued thereon.
- (iv) The balance amount be returned to the appellant – Insurance Company with interest accrued thereon.

[R. G. AVACHAT, J.]

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