

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

FIRST APPEAL NO.305 OF 2021

1. Ramesh s/o. Manoharrao Bote
Age: 33 years, Occu. Agri.
R/o. Upala (T) At present Shirsav,
Tq. Paranda, Dist.Osmanabad. .. **APPELLANT**
[Orig.Claimant]

VERSUS

1. Popat s/o. Dattu Jagtap
Age: Major, Occu.Agriculture,
R/o. Kurdu Tq.Madha, Dist.Solapur
Owner of Tractor No.MH-45/F-3948
2. The Manager,
United India Insurance Co.Ltd.
Shivaji Chowk, above Axis Bank,
2nd Floor, Kings Corner,
Osmanabad Tq.Osmanabad,
Dist. Osmanabad. ..**RESPONDENTS**

...

Mr.V.S.Undre, Advocate for the appellant.
Mr.Swapnil S. Rathi, Advocate for respondent nos.1 and 2.

...
CORAM : S.G.DIGE, J.

Reserved on : 15.07.2022

Pronounced on : 22.08.2022

JUDGMENT :

1] Challenge in this appeal is to the judgment and order passed by the Motor Accident Claims Tribunal, Bhoom. The appellant – original claimant has preferred this appeal for enhancement of compensation.

Brief facts of the case are as under:

2] On 31st March, 2012, appellant had been to Barshi for weekly bazar. After completing his work, the appellant and his friend namely Pruthviraj were proceeding to their village Uplai (T) on motorcycle bearing No.MH-13/AV-9457. Pruthviraj was driving the said motorcycle. When they reached on Barshi-Uplai road, it was about 7.15 p.m. At that time, one tractor bearing No. MH-45/F-3948 came from the opposite side, in high speed. Pruthviraj took motorcycle on the Kacha / rough road. However, driver of the said tractor could not control it. The said tractor dashed motorcycle. Due to dash, appellant and Pruthviraj fell down on the road and sustained multiple grievous injuries. The complaint was filed against the Tractor driver for rash and negligent driving.

3] The appellant filed claim petition before the Motor Accident Claims Tribunal, Bhoom [for short 'Tribunal'] for getting compensation. The Tribunal has awarded the compensation of Rs.1,64,875/-. Against the

said Judgment and order, this appeal is for enhancement of amount.

4] The learned counsel for the appellant has raised mainly two issues [i] multiplier is not applied by the Tribunal while calculating the compensation and [ii] disability of the injured is not properly considered.

5] It is the contention of the learned counsel for the respondents that the appellants failed to prove disability before the Court by proper evidence. Hence, the disability of 20% considered by the Tribunal is proper. The Tribunal has considered all the aspects and has granted compensation. Accordingly, the order passed by the Tribunal is just and valid.

6] I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal. It is the contention of the learned counsel for the appellant that while calculating the compensation the Tribunal has not applied the multiplier. It appears from the record that at

the time of accident, the appellant was 30 years old. The Tribunal has not applied multiplier while calculating compensation. Considering the age of the appellant and as per the law laid down in the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another** reported in **[2009] 6 SCC 121** the multiplier of 17 is applicable to the appellant. The Tribunal has considered monthly income of the appellant of Rs.5,000/-. It is not disputed by appellant.

7] In respect of issue of disability of the injured, it is the contention of the appellant that the Medical Officer has issued certificate of 40% permanent disability. However, the Tribunal has considered only 20% disability.

From the evidence of Doctor – PW2 Ganesh Patil it reveals that the appellant has suffered 40% permanent disability. It appears from the record that the appellant in his evidence has stated that he was operated and screw was installed in his thigh after operation, but the disability certificate issued by other Doctor, who has not treated him or operated him. Doctor, who has issued

disability, has treated the appellant as OPD patient, that too, in the year 2015 whereas accident was occurred in the year 2012. In my view, disability considered by the Tribunal is correct.

8] The Tribunal has considered 20% disability but the Tribunal has not applied multiplier while calculating compensation. When there is permanent disability then it is necessary to apply the multiplier. Considering multiplier, calculation of compensation for which the appellant is entitled, is as under:-

	Head	Compensation
1]	Monthly income of appellant	Rs.5000/- p.m.
2]	Percentage of Disability	20%
3]	Monthly Pecuniary Loss	Rs.1000/- p.m.
4]	Yearly loss	Rs.12000/- p.a.
5]	Proper Multiplier 17 [Age 30 Years]	

Total pecuniary loss comes to Rs.2,04,000.00

Non pecuniary loss :

Pains & sufferings	Rs.30,000/-
Travelling charges	Rs.10,000/-
Special Diet	Rs.10,000/-

Attendance charges	Rs.10,000/-
Medical Bills	Rs.52,875/-
Total Entitlement	Rs.3,16,875/-

[The Tribunal has awarded the compensation of Rs.1,64,875/-]

Considering the above calculations, the appellant is entitled for enhanced compensation of Rs.1,52,000/-.

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

ORDER

i] The appeal is partly allowed.

ii] The appellant is entitled for enhanced compensation of Rs.1,52,000/-. The rate of interest is as per Tribunal.

iii] Accordingly, Appeal is disposed of.

[S.G.DIGE]
JUDGE