

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

FIRST APPEAL NO.779 OF 2004

Suresh Tukaram Bedre
Age: 45 years, Occu: Agri & Tution
R/o Chapadgaon, Tq. Karjat
Dist. Ahmednagar

... Appellant
[Orig. Claimant]

Versus

1. Virednrakumar Bhimsing
Age: Major, Occu: Business
R/o V. P. O. Mundeale, Delhi

2. National Insurance Co. Ltd.,
Registered Office Kolkata,
Through Divisional Office,
Raj Chambers, Kothala Maidan,
Ahmednagar, Tq. & Dist. Ahmednagar

3. Mahavir Nephesing Jat,
Age: Major, Occu: Driver,
R/o Gopinaya, Tq. Bahadurgad,
Dist. Rotal, Haryana State

... Respondents
[Original Opponents]

...

Mr. S. V. Suryawanshi holding for Mr. L. B. Plod, Advocate for Appellant
Mr. S. V. Kulkarni, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 07.06.2023

PRONOUNCED ON : 28.06.2023

JUDGMENT :

1. The appellant / original claimant impugns the judgment and award dated 07/10/2003, passed by the Motor Accident Claims Tribunal,

Ahmednagar [for short 'the Tribunal'], in Motor Accident Claim Petition (MACP) No.931/1997 in this appeal, filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The claimant had approached the Tribunal under Section 166 of the Act raising the claim for compensation of Rs.300000/-. The claimant contends that, on 21/05/1997, while he was travelling in jeep bearing registration No. MH16/E-653 from Karmala to Chapadgaon, a truck bearing registration No.DLIG/A-7010 owned by respondent no.1 and insured with respondent no.2 dashed to the jeep. On account of the said accident, the claimant suffered grievous injuries resulting into permanent disablement. According to the claimant, he was hospitalized in Sancheti Hospital at Pune during the period from 22/05/1997 to 28/06/1997. He was treated for multiple fractures and undergone three surgeries of right hand. An iron rod has been inserted to support bones during such surgery.

3. The claimant suffered permanent disablement. According to the claimant, he was aged about 38 years and engaged in teaching musical instruments. He had almost 30 students, contributing towards his income to the tune of Rs.3000/- per month. According to the claimant, he lost the working capacity and now depends on others for his daily pursuits. The claim petition was contested by the respondent. i.e. insurer of the truck by filing a written statement [Exhibit-25]. The claimant relied upon his own evidence and evidence of Dr. Pradeep Ingale [Exhibit-45] to prove the permanent disablement. By evidence of Kisan Bhujbal, he seeks to prove his profession as music teacher and loss of earning. The Tribunal, after considering the rival contentions, passed an award of Rs.83,500/- inclusive of NFL amount in favour of the claimant. The claimant aggrieved assessment of compensation approached this Court.

4. Mr. Suryawanshi, learned Advocate holding for Mr. Palod, learned Advocate appearing for the appellant / original claimant vehemently submits that, the assessment of compensation made under the impugned award is grossly inadequate. He would submit that, though the claimant has suffered permanent disablement and loss of future earning, the Tribunal granted meager amount as lump sum compensation. He would submit that; the multiplier method is regarded as best method for assessment of compensation even for injury cases. The Tribunal has not assigned reasons for departing recognized method of assessment. He would further submit that, Tribunal awarded paltry sum towards non-pecuniary heads. Hence, he seeks enhancement of compensation.

5. Mr. Kulkarni, Learned Advocate appearing for respondent no.2/Insurer vehemently opposes the contentions of appellant. He would submit that, the claimant failed to establish his profession as well as loss of earning consequent upon the injury suffered in the accident. He would submit that, in absence of evidence regarding loss of earning, the Tribunal is justified in awarding lump sum compensation. He would point out that, the accident occurred in the year 1997. The Tribunal has assessed loss keeping in mind price index of relevant period of accident and granted just and proper compensation. Hence, he urge for dismissal of appeal.

6. Having considered the submissions advanced by the learned Advocates appearing for both the sides and after perusal of the record, it can be gathered that, there is no dispute about the accident and injury suffered by the claimant. The dispute as regards to the assessment of compensation is posed in this appeal. Perusal of findings recorded by the Tribunal on the point of income of the claimant and assessment of compensation would show that, although the Tribunal has accepted that, the claimant suffered 35% permanent disablement on the basis of evidence of orthopedic surgeon, Dr. Pradeep Ingale, the compensation is assessed without applying multiplier method. The Tribunal has not supplied adequate reasons for departing from

the established method of assessment of compensation.

7. Now, it is well settled that even for assessment of future losses in injury cases multiplier method has to be adopted, so that uniformity / consistency can be achieved in awards passed by the different Courts. The Supreme Court of India in the matter of **General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas (MRS) and Others** reported in (1994) 2 SCC 176, explained significance of multiplier method being a scientific method and observed that computation of compensation can be subjected to a well-settled mathematical formula. After considering two recognized methods, those were adopted for determination of compensation, the multiplier method has been recognized as most appropriate and logically sound. It has been emphasized that a departure from multiplier method can only be justified in rare exceptional cases. Keeping in mind the aforesaid principles of law envisaged by the Supreme Court, the assessment of compensation will have to be arrived by applying the multiplier method. In the case of **Sarla Dixit (SMT) and Another Vs. Balwant Yadav and Others** reported in (1996) 3 SCC 179, the Supreme Court of India again reiterated the requirement of adopting multiplier method for determination of compensation.

8. The claimant stated in his deposition that, he was imparting music training to approximately 30 students, each of them was contributing Rs.100/- towards remuneration. No specific material is brought on record to support such income. Bare statement of the claimant would not suffice to prove exact income. Pertinently, the claimant could not place any material to show that he himself was trained in music. The claimant recorded evidence of CW-2 Kisan Bhujbal, who states that, the claimant was supplying musical instruments prior to accident and he was imparting training to 30 to 35 students. However, this witness is silent about the remuneration received by the claimant. In that view of the matter this Court finds that, the claimant

has failed to establish his income by leading cogent and reliable evidence. However, considering fact that accident occurred in the year 1997, notional income of the claimant can be reasonably considered to the tune of Rs.24,000/- per annum.

9. Dr. Pradeep Ingale certified permanent disability of claimant to the extent of 35%. This Court do not find any reason to discard permanent disability certificate placed at Exhibit-45. The cross-examination of Dr. Pradeep Ingale would show that nothing adverse has been extracted to discard his testimony.

10. The Tribunal recorded the finding that the claimant was admitted in hospital and took the medical treatment for almost two months. The evidence on record suggests that the claimant had suffered compound grade III A fracture proximal ulna L/3 humerus right side and compound fracture middle phalange right ring finger. In that view of the matter, the claimant is entitled for compensation towards non-pecuniary heads. The Tribunal has awarded Rs.30000/- towards permanent disability, apart from, compensation towards special diet, attendant charges, loss of income during the period of hospitalization etc. This Court do not find infirmity in the assessment of compensation on the aforesaid heads. However, the assessment towards future loss of earning requires to be modified. Since the claimant was aged about 38 years, he would also be entitled for addition of compensation towards loss of future prospects. The multiplier of 15 would be applicable to the age group of 35 to 40 years. Hence, the assessment of compensation can be made as under:

Annual income of the claimant	Rs.24000/-
40% addition future prospects	Rs. 24000/- + Rs.9600/- = Rs.33600/-
Loss of future earning commensurate to permanent disablement of 35% as assessed by medical practitioner	Rs. 33600/ @35%= Rs.11760/- =

Future loss of earning	Rs.11760 x 15=1,76,400
Addition towards medical expenses	Rs.24000/-
Addition towards special diet	Rs.3000/-
Addition towards attendant charges	Rs.3000/-
Addition towards Transportation charges	Rs.2500/-
Addition towards loss of income treatment period	Rs.6000/-
Addition towards permanent disability	Rs.30000/-
TOTAL	Rs.2,44,900/-

11. In view of the aforesaid assessment, the claimant would be entitled for total compensation of Rs.2,44,900/-. Hence, this Court proceeds to pass following order:

ORDER

- (i) Appeal is partly allowed.
- (ii) The respondent / opponent nos.1 to 3 shall pay jointly and severally an amount of Rs.2,44,900 /- (inclusive of NFL amount) together with interest @ 7% per annum from the date of filing of claim petition.
- (iii) The respondents shall deposit the compensation amount after adjusting the amount already released under the award passed by the Tribunal within a period of eight weeks.
- (iv) The claimant shall be at liberty to withdraw the amount deposited by the respondents after depositing deficit court fees, if any.
- (v) Award be drawn accordingly.

(S. G. CHAPALGAONKAR, J.)