

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

**FIRST APPEAL NO. 925 OF 2006.**

Tukaram s/o. Chabu Kotkar,  
Age 27 years, Occ. Welding works,  
R/o. Kedgaon Tq. & Dist. Ahmednagar.

APPELLANT.

VERSUS

1] Rajendra s/o. Mohanrao Pathare,  
Age 42 years, Occ. Business,  
R/o Shivaji Nagar, Datta Chowk,  
Kedgaon, Tq. & Dist. Ahmednagar.

2] The New India Assurance Company Ltd.,  
Through its Divisional Manager,  
Abbot Building, First Floor,  
Near Ashoka Hotel, King's Road,  
Ahmednagar Tq. & Dist. Ahmednagar.

RESPONDENTS.

Mr. N.R. Bhavar, Advocate for appellant,  
Mr. M.M. Ambhore, Advocate for respondent No.2.

**CORAM : S.G. CHAPALGAONKAR, J.**

**DATE : 18TH AUGUST, 2023**

**JUDGMENT :-**

The appellant/original claimant aggrieved by the judgment and award dated 16.2.2005 passed by the Motor Accidents Claim Tribunal Ahmednagar in MACP No.372 of 2003 approached this Court under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation. The appellant had approached the Motor Accidents Claim

Tribunal at Ahmednagar under Section 166 of the Motor Vehicles Act, thereby raising the claim for compensation of Rs. 7 Lakhs from the respondents i.e. owner and insurer of the offending vehicle i.e. Motor cycle bearing Registration No. MH-16/S-3664. The claimant contends that he was aged about 25 years and working as a welder. On account of the injuries sustained in the accident, he had suffered loss of vision of the left eye and also fractures. The qualified medical practitioners have quantified the permanent disablement up to 50%. The applicant has also raised claim for medical expenses and consequential losses.

2. In support of the contention, the claimant has recorded his own evidence and evidence of Dr. Vijaykumar Deshpande and Atul Khalkar. The claimant has also recorded evidence of his employer Bhausahab Sakharam Satpure to prove his income. The Tribunal, after assessment of the evidence passed an award of Rs. 3,07,000/- alongwith interest @ 9% p.a. in favour of the claimant.

3. Mr. Bhawar, learned counsel for the claimant would submit that the Tribunal has erroneously applied multiplier of 16 although the claimant was aged 25 years and hence, multiplier of 18 ought to have been applied. He would submit that nothing is added towards future prospects. The income of the claimant is also erroneously considered to Rs. 1500/- p.m. only. He would submit that although permanent disability suffered by claimant is proved to the extent of 50% through the evidence of medical practitioners, the Tribunal has considered the loss of earning capacity to the extent of 30% only. He would, therefore, submit that the reassessment of compensation is necessary on the aforesaid grounds.

4. Mr. Ambhore, learned counsel for the respondent Insurance Company supports the judgment and award passed by the Tribunal. He would submit that the claimant mentioned his age as 32 years in the format of claim petition, therefore, the multiplier of 16 is rightly applied. He would further submit that the evidence of the medical practitioners is insufficient to establish permanent disablement of 50%, more particularly, the loss of earning capacity as claimed. He would further submit that the accident occurred in the year 2003. The Tribunal has rightly considered the notional income as per the valuation of money at the relevant time and passed appropriate award.

5. Having considered the submissions advanced by the learned counsel appearing for the respective parties, the contentious issue raised before this court is regarding the assessment of compensation. It is not in dispute that the claimant has suffered injuries in the accident dated 13.2.2003 and he has suffered permanent disablement. The evidence of Dr. Vijaykumar Deshpande, who is a qualified medical practitioner /Orthopedic surgeon clearly depicts that the claimant suffered head injury with intra cranial and extra-dural Haematoma. He assessed the permanent disability to the tune of 50% as per the certificate placed at Annexure A. Similarly, the evidence of Dr. Atul Khalkar, who is an ophthalmologist clearly depicts that the claimant suffered damage on account of injury to the optic nerve of left eye. He clearly states that there is irreversible damage to the left eye and there is absolutely no possibility of recovery of vision. He has specifically stated that the applicant is unable to do the welding work as before.

If the aforesaid evidence is taken into consideration, there is no doubt that the applicant has suffered permanent disablement and loss of earning capacity looking to the nature of work that he was doing before the accident i.e. Welding work. His loss of working capacity can be definitely considered commensurate to the loss of permanent disablement as assessed by the medical practitioners. Therefore, the tribunal has committed an error in considering the loss of earning capacity to the extent of 30% only as against 50% as assessed by the qualified medical practitioners. So far as the income of the claimant is concerned, the reliance is placed on evidence of PW-3 Bhausahab Satpute. He testified that the claimant was working with him for more than 2 and half years prior to the date of the accident and drawing monthly salary of Rs. 2,500/-. However, during cross examination, he stated that the applicant was working on daily basis and he had average 25 to 26 working days. If his statement in cross examination is considered with the other part of the evidence, it can be safely presumed that the claimant was earning Rs. 2000/- p.m. The tribunal has totally discarded evidence of PW-2 without giving justifiable reasons. In that view of the matter, there is no impediment in considering the income of the claimant @ Rs. 2000/- p.m.

6. Now, it is well settled that even in injury cases, the claimant is entitled for addition towards the future prospects. The age of the claimant appears to be 25 years. Therefore, addition of 40% of the amount, needs to be made by way of future prospects. Similarly, multiplier of 16 is wrongly applied as the evidence on record clearly depicts that the claimant was 25 years old. The multiplier needs to be corrected and modified to 18.

7. In case of *Mrs. Helan C. Rebello and others vs. MSRTC and another, reported in (1999) 1 SCC 90*, the Supreme Court has laid down certain guidelines and carved out the various heads for compensation to be awarded to the victim of the accident. Particularly, in relation to the injury cases, apart from monetary losses, compensation towards nonpecuniary heads has to be assessed. The permanent disability itself is an independent head for grant of compensation. However, the tribunal has failed to grant compensation against those heads. In that view of the matter, re-assessment of compensation can be made in tabular form, as mentioned below :-

8.

| Sr. No. | Particulars                                         | Amount                         |
|---------|-----------------------------------------------------|--------------------------------|
| 1.      | Annual income Rs. 2000 x 12 = Rs.24000              | Rs.24000                       |
| 2.      | Add 40% towards future prospects = Rs.9600          | Rs. 9600 + 24000<br>= 33,600/- |
|         | 50% Amount towards future income would be           | Rs.16,800/-                    |
|         | Apply multiplier of 18 x 16,800/-                   | Rs. 3,02, 400/-                |
| 3.      | Add towards permanent disablement                   | Rs. 25,000/-                   |
| 4.      | Add towards pains and sufferings                    | Rs. 25,000/-                   |
| 5.      | Add towards Special diet                            | Rs. 10,000/-                   |
| 6.      | Add towards loss of income during medical treatment | Rs. 10,000/-                   |
| 7.      | Add attendant charges                               | Rs. 10,000/-                   |
| 8.      | Add Medical Expenses as awarded by Tribunal         | Rs. 1,90,545/-                 |
|         | <b>TOTAL</b>                                        | <b>Rs. 5,72,945/-</b>          |

9. In view of above, appeal is deserves to be allowed. Hence, the following order :-

**: O R D E R :**

- [i] The appeal is partly allowed.
- [ii] The judgment and Judgment and award passed by the MACT, Ahmednagar in MACP No. 372 of 2003 is modified
- [iii] The respondent Nos. 1 and 2 shall jointly and severally pay a sum of Rs.5,72,945/- (Rupees five lakhs seventy two thousand nine hundred forty five only) to the claimant (including NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.
- [iv] Compensation already paid/deposited in terms of the award passed by the Tribunal shall be appropriated.
- [v] Award be drawn accordingly on payment of deficit court fees, if any.
- [vi] On deposit of compensation by the respondent Insurance Company, it be disbursed to the claimants account directly through bank transfer.
- [vii] First appeal is disposed off.

**[S.G. CHAPALGAONKAR]  
JUDGE**

grt/-