

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1965 OF 2012**

Kailas S/o Uttam Mali,
Age 24 years, Occ. Service,
R/o. Shirpur Warwade, Taluka Shirpur,
District Dhule.

.. APPLICANT.

VERSUS

1. Devendra Dagadu Ahire,
Age : Adult, Occ. Business,
R/o. Krana Nagar, Shirpur,
Tq. Shirpur, Dist. Dhule.

2. The New India Assurance Co. Ltd.,
(Notice to be served on Branch Manager,
The New India Assurance Co. Ltd.,
Branch Office, Dhule

.. RESPONDENTS.

Mr. L.S. Mahajan, Advocate for the appellant.
Mr. A.B. Gatne, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 1st August, 2023
PRONOUNCED ON : 8th August, 2023.**

JUDGMENT. :-

The appellant/original claimant impugns the judgment and award dated 10.3.2008 passed by the MACT, Dhule, in MACP No. 495 of 2008 in this appeal filed under Section 173 of the Motor Vehicles Act. The appellant seeks enhancement of compensation.

2. For the sake of convenience, parties are referred to, as per their original status.

3. The contention of the claimant is that, on 10th March, 2008, while he was traveling as a pillion rider on motor cycle bearing Registration No. MH-18/S-3013, a Jeep bearing No. MH-18/E-8250 dashed against the motorcycle. The claimant sustained multiple injuries in the said accident. He was aged 22 years and has incurred medical expenses of more than Rs. 50,000/-. The claimant further contends that he suffered 35% permanent disablement and incapacitated him from continuing with his work as before. The claimant, in his endeavour to establish his claim, relied upon his own evidence, so also, the evidence of Dr. Saindane, who treated the claimant during the period from 11.8.2008 to 5.11.2008. The claimant further relied upon the evidence of Dr. Shinde, to prove the permanent disability. On the point of medical expenses, the claimant relied upon the evidence of Vijay Dargad.

4. The Tribunal , after considering the evidence on record, partly allowed the claim and passed an award of Rs. 1,50,000/- including the NFL with future interest @ 9 % p.a.

5. Mr. L.S. Mahajan, learned advocate for the appellant contends that the claimant was aged about 22 years when the accident occurred. He suffered permanent disablement of 45%, as certified by Dr. Shinde. The medical expenses of Rs. 56,000/- were incurred during the treatment period. However, the Tribunal granted meager compensation of Rs. 15,000/-. He would submit that the Tribunal ought to have applied multiplier method and added the loss towards future prospects. He submits that a paltry sum is awarded towards non -pecuniary losses.

6. Per contra, Mr. A.B. Gatne, learned counsel for the respondent Insurance Company justifies the award contending that except bare words of the claimants, there is nothing to show his occupation and income at the time of accident. He would submit that although Dr. Shinde has certified that claimant has suffered 45% permanent disablement, he failed to justify the same before the Court. Mr. Gatne, invited attention of this Court to the cross-examination of Dr. Saindane to contend that the treating doctor has admitted that the claimant has been fully recovered after the medical treatment. Therefore, he urges that there is no merit in the appeal, same be dismissed.

7. Having considered the submissions advanced, and on perusal of the record and proceeding, it is evidence that there is no quarrel regarding incident and injuries suffered by the claimant. The issue of assessment of compensation has been posed for consideration of this Court. The claimant was aged about 22 years. In absence of any evidence regarding his income, the Tribunal has rightly assessed income @ Rs. 3,000/- p.m. However, multiplier of 18 is applicable to his age. The Tribunal has wrongly adopted the multiplier of 17. Even nothing has been awarded towards future prospects. So far as injuries and disability suffered by the claimant is concerned, it can be noticed that the claimant had suffered a fracture of tibia fibula that was operated by inserting rod. The Doctor i.e. PW-2 Dr. Saindane stated in his examination in chief that the claimant can do work, however, without same efficiency. His subsequent admission that as per the medical science, the claimant is fully recovered cannot be interpreted to mean that no disability survives. If the claimant had suffered fracture requiring implant, definitely, he would lose his natural physical strength and disability would endure.

True, that the assessment of disability made by two witnesses relied by the claimant is not sufficient to justify the percentage, however, in my view, the loss of earning capacity can be adjudged @ 20% looking to the nature of disability suffered by claimant. The evidence shows that claimant was hospitalized initially for a period from 11.3.2008 to 18.3.2008 and thereafter, for 2 days, i.e. from 4.11.2008 to 5.11.2008. As such, the claimant was hospitalized for more than 9 days. Even the evidence on record shows that the claimant was required to visit hospital for follow up treatment till January 2009. Therefore, the claimant would be entitled for compensation towards pain, suffering, discomfort in life, loss of amenities in law, transportation apart from loss of future earning and medical expenses.

8. The Tribunal has assessed the medical expenses to the tune of Rs. 22,700/- only. However, medical bills which are admitted in evidence placed from Exh.35 to 80 accounts to Rs. 55,759/-. the claimant is entitled for reimbursement of all the medical expenses.

9. In that view of the matter, the re-assessment of compensation can be made in tabular form as below :-

Sr. No.		
1.	Annual income of the claimant	Rs. 36,000/-
2.	Add 40% towards future prospects	Rs.14,400/-
3.	Total	Rs. 50,400/-
4.	20% future loss of earning	Rs. 10,080/-
5.	Multiplier of 18 x 10080	Rs, 1,81,440/-
6.	Medical expenses	Rs. 55,759/-

7.	Compensation towards permanent disablement	Rs. 20,000/-
8.	Compensation towards pain, suffering, loss of amenities	Rs. 20,000
9.	Compensation towards future medical expenses	Rs. 10,000/-
10.	Compensation towards special room and attendant charges and transportation	Rs. 10,000/-
	TOTAL	Rs.2,97,199/-

10. In view of aforesaid calculations, the appeal deserves to be partly allowed. Hence, the following order :-

[i] The appeal is partly allowed with proportionate costs.

[ii] The judgment and award passed by the Motor Accidents Claim Tribunal, Dhule in MACP No. 495 of 2008 is modified.

[iii] The respondent Nos. 1 and 2 shall jointly and severally pay a sum of Rs.2,97,199/- (Rupees two lakh ninety seven thousand one hundred ninety nine) 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. Award be drawn accordingly on payment of deficit court fees, if any.

[v] If the compensation awarded is deposited by the respondent Insurance Company, it be disbursed to the claimant.

[vi] First appeal is disposed off.

[S.G. CHAPALGAONKAR]
JUDGE