

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

FIRST APPEAL NO.826 OF 2012

Samadhan s/o Harishchandra Nalawade
Age: 24 years, Occu: Plumber
R/o. Datta Nagar, Khanekar Side,
Khergaon, Pune
At present Wakadi
Tq. Paranda, Dist. Osmanabad

... Appellant
[Orig. Claimant]

Versus

1. Vilas s/o Laxman Sangle
Age: Major, Occu: Business
Sr. No.14/13, Bhalsthika Nagar
Near Vijay Traders, Tergaon
Pune

2. The New India Assurance Co. Ltd.,
Divisional Officer, Karve Road,
Pune, Through the Branch Manager,
New India Assurance Co. Ltd.,
Near Shivaji Chowk, Osmanabad

... Respondents
[Orig. Respondents]

...

Mr. A. S. More, Advocate for the Appellant
Mr. S. B. Choudhari, Advocate for Respondent No.1
Mr. A. B. Kadethankar, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24.02.2023

PRONOUNCED ON : 08.03.2023

JUDGMENT :

1. The present appeal impugns the judgment/award dated 05.12.2011, passed by the Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition (MACP) No.61/2010. The appellant original

claimant, feeling aggrieved by inadequate compensation granted by the Tribunal approached this Court under Section 173 of Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. Learned advocate Mr. A. S. More appearing for the appellant submits that the appellant suffered injuries in an accident dated 10.02.2010 while he was travelling as pillion rider on a motorcycle. The offending rickshaw bearing Registration No.MH-14/AZ-5528 collided against the motorcycle. The rickshaw driver was prosecuted for rash and negligent driving. The rickshaw was owned by respondent no.1 and insured with respondent no.2.

3. He would further submit that the claimant was treated at Chaitanya Hospital during the period from 10.02.2010 to 22.02.2010 as indoor patient. The medical expenses of more than Rs.1,00,000/- (Rupees One Lakhs) were incurred by claimant. He would submit that the claimant was working as a Plumber and earning Rs.4000/- per month. However, because of injury suffered in the accident, the claimant has suffered loss of earning capacity. He would point out that the permanent disablement has been assessed by qualified medical practitioner to the extent of 20% owing to fracture of tibia & fabula right. He points out disability certificate [Exhibit-33] placed on record of the Tribunal. He would submit that the Tribunal assessed the compensation without applying multiplier method. The meager compensation of Rs.1000/- has been awarded towards the permanent disablement. The total compensation of Rs.60000/- awarded by the Tribunal is inadequate. He urges to award just compensation to the claimant.

4. Learned advocate Mr. S. B. Choudhari appearing for respondent no.1, as well as learned advocate Mr. A. B. Kadethankar appearing for respondent no.2 supported the judgment/award passed by the Tribunal. They would submit that there is nothing on record to show that the claimant was working as a Plumber and even the evidence of doctor is not sufficient to

hold that the claimant has lost his earning capacity. Learned advocate Mr. A. B. Kadethankar appearing for respondent no.2 – insurance company placed his reliance on the judgment of the Supreme Court of India in the case of **Raj Kumar Vs. Ajay Kumar & Anr.** reported in **2011 (1) SCC 343** to buttress his submission that the loss of earning capacity and percentage of permanent disablement are different concepts. It cannot be presumed that the loss of earning is commensurate to the percentage of permanent disablement assessed by the medical practitioner. He would submit that the evidence on record is not sufficient to draw the inference that the claimant has suffered the loss of earning capacity. The Tribunal has granted lump-sum compensation for want of such evidence.

5. Having considered the submissions advanced by the advocates appearing for the respective parties and after going through the record, this Court finds that the claimant has suffered fracture of shaft right tibia. He was operated and procedure was carried out for closed reduction internal fixation. The claimant was examined by CW-2 - Dr. Ajay Maindarkar for the purpose of assessment of the disability. The assessment of permanent disability is made on the basis of physical condition as on 29.10.2010. The claimant was aged about 25 years at the time of accident. He has specifically pleaded that he was working as a Plumber prior to the date of accident. The claimant has recorded his evidence before the Tribunal wherein he reiterated that he was working as a Plumber prior to the accident at Pune and he was required to climb on high-rise building for that purpose.

6. The evidence on record is sufficient to establish that the claimant suffered permanent disablement and external implant was inserted for correction of orthopedic injury. There is no reason to disbelieve the statement of the claimant that he was working as a Plumber. Even for the sake of argument, it is assumed that the claimant was working as a Labour, the impact of the permanent disablement on his earning capacity cannot be ruled out. Dr. Ajay Maindarkar specifically opined that the claimant is not

able to climb ladder. During the cross-examination, Dr. Ajay Maindarkar admitted that the claimant climbed the staircase of the building for attending the Court. In that view of the matter, this Court cannot accept the contention of the claimant that he has suffered the total loss of earning capacity. However, on the basis of evidence available on record, there is no reason to discard the entire case of the claimant. If the claimant has suffered 20% permanent disablement, the loss of earning capacity commensurate to the permanent disablement suffered by him will have to be presumed. In that view of the matter, this Court holds that the compensation needs to be worked out by applying multiplier method and considering the loss of earning capacity to the extent of 20% to the claimant.

7. The Tribunal has considered notional income of the claimant @ Rs.4000/- per month, which appears to be just and proper. Considering the age of claimant, 40% amount needs to be added by way of future prospects. At this stage, the learned advocate Mr. A. B. Kadethankar appearing for respondent no.2 contends that in injury cases, there is no reason to consider addition of future prospects. However, his submission is not acceptable for the reason that the future prospects are to be considered in view of the rising price index as well as craving of an individual to match his earning to meet out the rising expenses. This principle apply with equal force in both death or injury cases. The Supreme Court of India in the case of **Sidram vs Divisional Manager United India Insurance Co. Ltd. (Civil Appeal No.8510/2022)** has reiterated concept of adding compensation by way of future prospects in injury claims. In that view of the matter, this Court holds that the claimant is entitled for enhanced compensation as under :

Monthly income of the claimant	Rs. 4000/-
Annual income of the claimant	Rs. 48000/-
Annual income after addition of 40% towards future prospects	Rs.60000/-
20% loss of future earning on account of permanent	Rs. 12000/-

disablement	
Total loss of future earning to the claimant owing to permanent disablement after applying multiplier of 18	Rs.216000/-
The compensation towards medical expenses	Rs.10000/-
Towards for pains, sufferings	Rs.10000/-
The expenses towards transportation, attendant and nutritious diet	Rs. 15000/-

8. In view of the aforesaid discussion, the judgment/award passed by the Tribunal deserves to be modified to that extent. The appeal deserves to be partly allowed and this Court pass the following order:

ORDER

- (i) The appeal is partly allowed with proportionate cost.
- (ii) The claimant is entitle for compensation of Rs.2,51,000/- (Rupees Two Lakhs Fifty One Thousand Only), [including NFL] from respondent nos.1 & 2 jointly and severally along interest @ 6% per annum from the date of filing of the claim petition.
- (iii) Respondent nos.1 & 2 are directed to deposit the amount of compensation within a period of two months from the date of this order.
- (iv) The amount deposited by respondent nos.1 & 2 as per award of the Tribunal shall be appropriated against the aforesaid amount.
- (v) On deposit of amount, claimant is at liberty to withdraw the same.
- (vi) Award be drawn accordingly.

(S. G. CHAPALGAONKAR, J.)