

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

FIRST APPEAL NO. 1320 OF 2004

Shri Atmaram Pandit Jadhav,
Age 38 years, Occ. Service,
R/o. Bibral, Tq. Nilanga,
Dist. Latur.

.. Appellant (Ori. Claimant)

Versus

1. Bajrangdas Mulchand Kabra
Age 45 years, Occ. Business,
R/o. Borgaon, (Nakuleshwar),
Tq. Ausa, Dist. Latur.

2. The New India Assurance Co. Ltd.,
through its Branch Manager,
Chandra Nagar, Latur.

.. Respondents (Ori. Opponents)

Mr. B.R. Kedar, Advocate for appellant

Mr. Dhananjay Deshpande, Advocate for respondent No.2.

**CORAM : S.G. CHAPALGAONKAR, J.
RESERVED ON : 20TH JUNE, 2023
PRONOUNCED ON : 30TH JUNE, 2023**

JUDGMENT :-

1. The appellant (original claimant) filed this appeal under Section 173 of the Motor Vehicles Act, aggrieved by the judgment and award dated 12.3.2004 passed in MACP No. 79 of 2002 by the Motor Accidents Claim Tribunal, Latur, by which the claim has been partly allowed.

2. For the sake of convenience, the parties shall be referred to as per their original status before the Tribunal.

3. The claimant contends that he was injured in an accident dated 14.2.2002 on account of a dash given by a jeep bearing registration No. MH-24/C-657. He was hospitalized for the period of more than one month. However, suffered permanent disability. The claimant raised the claim for compensation of Rs. 3 Lakhs before the Tribunal. By the impugned order, an award for Rs. 74,000/- alongwith interest @ 9% has been passed which is inadequate.

4. Mr. B.R. Kedar, learned advocate appearing for the claimant would submit that the claimant has suffered permanent disablement which has been certified by the medical practitioner. Relying upon the Certificate at Exh.29 and deposition of Dr. Sunit, he would submit that the claimant has suffered 25% permanent disablement on account of fracture of tibia and fibula. He would invite attention of this court to the Discharge Card Exhibit 28 to urge that the claimant was hospitalized for more than one month. Mr. Kedar would submit that the Tribunal did not grant any compensation towards the permanent disablement, attendant charges during hospitalization. He would further submit that a paltry sum has been awarded towards pain and suffering as well as discomfort in life. He would submit that the applicant is employed as a teacher and considering the nature of permanent disablement, just compensation ought to have been granted.

5. Per contra, Mr. D. P. Deshpande, learned advocate appearing for the respondent No.2 Insurer would submit that the claimant is in

service as a teacher. No loss of future earnings has been pleaded and proved. He would submit that the Tribunal considered all possible heads for grant of compensation and passed the award of just compensation, which cannot be interfered in appeal.

6. Having considered the submissions advanced, it can be gathered that the issue as regards quantification of compensation has been raised in this appeal. There is no dispute that the claimant had suffered 25% permanent disablement which has been duly established before tribunal through evidence of doctor and Permanent Disability Certificate.

7. Pertinently, Tribunal has not granted any compensation towards permanent disablement suffered by the claimant. True that, the claimant is in service as a primary teacher and his income continued even after the accident. There may not be loss of future earnings. However, his discomfort in life, loss of amenities owing to permanent disablement needs to be adequately compensated. The claimant was aged about 36 years at the time of accident. In that view of the matter, it would be appropriate to award Rs. 75,000/- towards permanent disablement.

8. The claimant was hospitalized for more than one month. The claimant has stated in his deposition that the amount of Rs. 40,000/- has been spent towards the ancillary expenses. The impugned judgment shows that a meager amount of Rs. 3,000/- has been awarded under that caption. Nothing has been awarded towards the attendant charges. Considering the aforesaid heads, the cumulative compensation of Rs. 25,000/- needs to be granted in addition to the compensation that has

been awarded by the Tribunal.

9. In that view of the matter, the claimant is entitled for additional compensation of Rs 1 Lakhs alongwith interest @ 6% p.a. from date of filing the claim petition. Hence the following order: -

ORDER

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

[ii] The opponent Nos. 1 and 2 shall joint and severally pay to total amount of Rs. 1,74,000/- to the claimant. The enhanced compensation of Rs. 1 Lakh shall carry interest @ 6% p.a. from the date of filing the claim petition.

[iii] The award passed by the Tribunal stands modified in aforesaid terms.

[iv] The compensation amount already paid/disbursed shall be appropriated. On deposit of the amount as per the modified award, the claimant shall be entitled to withdraw the same. The claimant shall deposit the deficit court fees, if any, forthwith. Award be drawn accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-