IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1111 OF 2022

Sambhaji s/o Shivaji Rakh,
age 29 yrs, Occ. Education,
Milk Supplier and Agriculture,
At present Occ. nil.
R/o Georai Khurd, Tq. Paithan,
Dist. Aurangabad. Appellant
(orig claimant)

Versus

1. Baburao S/o Gema Rathod,
age 55 yrs, Occ. Service,
R/o Ruplacha Tanda, Manikdaundi,
Tq Pathardi, Dist. Ahmednagar,
Now R/o Radhaswamy Residency,
Room No.407, Varab, Kalyan,
Tq. Kalyan, Dis Thane.

2. The Divisional Manager,
Royal Sundaram Alliance Insurance
Company Limited, Near Chunnilal
Asaram Petrol Pump,
Adalat road, Aurangabad Respondents.
(orig respondents)

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Mr. A.P. Khedkar, Advocate for appellant.
Mr. C.V. Bodke h/f G.J. Pahilwan Advocate for respondent No.1
Mr. Mohit R. Deshmukh, advocate for respondent no.2.

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CORAM : S.G. CHAPALGAONKAR, J.
DATED : 2nd AUGUST, 2023

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JUDGMENT :-

. The appellant/original claimant approached this Court under section 173 of the Motor Vehicles Act, thereby impugning the judgment and award dated 10.12.2021 passed by the Motor accident Claims Tribunal, Aurangabad in MACP No.133 of 2017.

2. The claimant had approached the Tribunal under section 166 of the Motor Vehicles Act raising claim for compensation towards injuries suffered by him in an accident dated 12.10.2016. Contention of the claimant is that he suffered permanent disablement on account of the injuries and consequential loss of earning. Contention of the claimant is that he was aged about 23 years and doing milk business alongwith his agriculture and earning Rs.25,000/- p.m. The claimant in support of his contentions relied upon his own evidence and evidence of PW 3 Dr.Jaiswal. The Tribunal accepted the case of the claimant and passed an award for Rs.4,30,816/- alongwith interest @ 6% p.a. The aggrieved claimant is before this Court seeking enhancement of the compensation.

3. Mr. Khedkar, learned counsel appearing for the appellant/claimant contends that the Tribunal has erroneously considered notional income @ Rs.6,000/- p.m. although, the claimant has pleaded his income Rs.25,000/- p.m. He would submit that the Tribunal did not add anything towards future prospects. Amount of medical expenses is not appropriately granted. He would further urge that interest @ 6% is not as per the prevailing interest rates of the Nationalized Banks.

4. Per contra, Mr. M .R. Deshmukh, learned counsel appearing for respondent no.2 Insurance Company contends

that in absence of income proof, the Tribunal is justified in considering the notional income based on minimum wages for rural area in the year 2017. He would submit that, in every case, future prospects cannot be considered unless the claimant establishe that the injury or permanent disablement has effect on his future loss of earning so also advancement in life. He would submit that the interest rate as it was prevailing during last five years has been considered by the Tribunal and appropriate award has been passed.

5. Having considered the submissions advanced by the learned counsel appearing for both parties, it is apparent that there is no dispute regarding injuries suffered by the applicant in the mtorvehicular accident involving motor vehicle insured with the respondent no.2. What has been pressed into service before this Court is the method of assessment of the compensation. The Tribunal has considered notional income of the claimant to the tune of Rs.6,000/- p.m. Although the claimant has pleaded about his income from the milk business as well as agriculture, nothing has been placed on record to establish the same. In that view of the matter, the Tribunal cannot be faulted in considering the notional income @ Rs.6,000/- p.m. particularly when the claimant resides in the rural area where minimum wages for agriculture labour during the year 2016-2017 were in that range only. Second contention of the appellant is that the Tribunal did not add anything towards future prospects. The claimant has pleaded his occupation as agriculture and milk business. If he has

suffered loss of earning capacity, on account of permanent disablement, such loss would be perpetuated even in future. Therefore, the argument advanced on behalf of respondent no.2-insurer that in the injury case, future prospects need not be considered, cannot be accepted. The next contention of the appellant is that the Tribunal could have granted interest rate @ 9% p.a. The accident in question took place in the year 2016. The claim petition is disposed off in the year 2021. The Tribunal has discretion under section 171 of the Motor Vehicles Act to grant interest. Such discretion has to be exercised based on the interest rates of the fixed deposits of the nationalized Bank during the relevant period. The claimant or respondents have not placed on record any material to indicate as to what was the prevailing rate of interest during the period of pendency of the claim petition. The Tribunal, in it's discretion granted interest @ 6% p.a. Discretion exercised by the Tribunal cannot be branded as arbitrary. In that view of the matter no interference is made in exercise of the appellate jurisdiction of this Court.

6. Mr. Khedkar, learned counsel appearing for the appellant contends that medical expenses incurred by the claimant are more than 81,000/-. However, the Tribunal has considered merely Rs.69,000/-. On perusal of the medical bills, it can be seen that the Tribunal has appropriately considered medical expenses as per bills produced on record. Therefore, no enhancement on this count can be granted. Resultantly, the claimant would be entitled for the enhanced

compensation towards loss of future prospects. Therefore, 40% amount will have to be added in the income of the claimant and award needs to be modified accordingly. Resultantly, the appeal is partly allowed.

Sr. No.	Heads	Amount
1.	Notional income of the injured 6,000/- + future prospects @ 40% = 2,400/-	Rs.8,400/-
2.	Multiplier of '18' (8,400 x 12) = 1,00,800/- 1,00,800 x 18 =	Rs.18,14,400/-
3.	P.D.C. 24% Functional disability as considered 24%	
4.	Pecuniary loss	Rs.4,35,456/-
5.	Medical Bills	Rs.94,776/-
6.	Non-pecuniary (addition of sr.4+5+6) = (Rs.5,55,232)	Rs.25,000/-
	TOTAL	**Rs.5,55,232/-**

In the result, following order is passed.

O R D E R

i. The appeal is partly allowed with proportionate costs.

ii. The judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad in MACP No.133 of 2017 dated 10.12.2021 is modified.

iii. The respondent nos.1 and 2 shall jointly and severally pay a sum of Rs.5,55,232/- (Rs. Five Lakh fifty five thousand two hundred and thirty two only) to the claimant (including NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.

iv. The amount already paid or deposited in pursuance of the Award passed by the Tribunal shall be appropriated.

v. First appeal is disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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