

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

**FIRST APPEAL NO.1533 OF 2004**

Prashant Bhaskar Kasar,  
Age : 30 years, Occu.: Service,  
R/o.: 103, Adarshnagar, Deopur,  
Dhule.

.... APPELLANT  
(Orig. Petitioner/claimant)

**VERSUS**

1. Kantilal Nemichand Jain,  
AGE : Adult, Occu.: Business,  
R/o.: Nagaon, Taluka &  
District Dhule.
2. The Oriental Insurance Co. Ltd.,  
Dhule Branch Office, Dhule.
3. Maharashtra State Road Transport  
Corporation, Dhule Division, Dhule ... RESPONDENTS  
(Orig.respondents)

.....  
Advocate for Appellant : Mr. Amol S. Sawant  
Advocate for Respondent No.2 : Mr. A. A. Puranik h/f  
Mr. A. S. Deshpande  
Advocate for Respondent No.3 : Mr. Amol S. Mali h/f  
Mr. D. S. Bagul

....

**CORAM : SANDIPKUMAR C. MORE, J.**

**RESERVED ON : 13/01/2023  
PRONOUNCED ON : 17/01/2023**

....

***JUDGMENT :***

1. The appellant i.e. original claimant, is seeking enhancement of the compensation granted to him by the Motor Accident Claim Tribunal, Dhule (hereinafter referred to as the learned Tribunal)

under the judgment and award dated 22/06/2004 in MACP No.167 of 2000.

2. This is an injury claim and the claimant has got injured in the accident between ST bus bearing registration No. MH-20-D-3082 and Tanker bearing registration No. MH-18/A-7049 on 04/12/1999 at about 10.30 a.m. on Mumbai-Agra National Highway in the vicinity of village Chikhalohod. The appellant was occupant of the aforesaid ST bus and the accident caused due to negligence of driver of the aforesaid tanker. Since the present appeal is only challenging the quantum of compensation awarded by the learned Tribunal, I restrict my finding only to that extent.

3. The learned Tribunal has granted compensation of Rs.47,000/- only to the appellant on account of injury sustained by him and the medical expenditure incurred by him. However, there is no bifurcation given by the learned Tribunal under which heads the amount of Rs.40,000/- out of total compensation has been awarded.

4. Heard rival submissions and also perused the impugned judgment and award alongwith the original record and proceedings of MACP No. 167 of 2000.

5. The learned counsel for the appellant vehemently argued that the learned Tribunal has miserably failed to appreciate the evidence on record and has granted meager amount of compensation by ignoring the fact that the appellant had incurred medical expenses of Rs.47,000/- and suffered from permanent disability to the extent of 40%. He pointed out that the learned

Tribunal did not consider the future loss of income relating to his permanent disability. He also submitted that the learned Tribunal did not consider appropriate multiplier to the age group of the appellant. In support of the submission, he relied on following judgments.

1. *Raj Kumar vs. Ajay Kumar and another, (2011) 1 SCC 343;*
2. *Erudhaya Priya vs. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601 and*
3. *National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680.*
4. *Kirti and another vs. Oriental Insurance Company Limited, (2021) 2 SCC 166 and*
5. *Sou. Santoshi Lakhimchand Agrawal (died) through L.Rs. in First appeal No.171 of 2002 decided on 07/01/2023 by this court.*

6. On the contrary, the learned counsel for respondent No.2 - insurance company supported the judgment of the learned Tribunal by opposing the submissions made on behalf of appellant. He pointed out that the appellant did not produce any medical evidence to substantiate his claim for future loss of income. Moreover, the contents of disability certificate have also not been proved by calling the necessary witness. As such, he prayed for dismissal of the appeal. However, in the alternative, he submitted that the expenses of medical treatment can be considered.

7. It is significant to note that the appellant has not produced on record anything about his income though he claimed that after completing education, he was doing some job. Moreover, it

appears that the learned Tribunal has also not considered the percentage of disability and refused the said percentage of disability for calculating future loss of income. Further, there is no explanation from the learned Tribunal as to how and on what basis it came to the conclusion that the appellant was entitled for an amount of Rs.40,000/- due to the injuries sustained by him. Further, though medical bills aggregating Rs.47,652/- were exhibited, but the learned Tribunal only granted Rs.7,000/- towards medical expenses as against those bills. It is to be noted here that the Hon'ble Apex Court has observed in many of its judgments that if the medical bills are on record not exhibited, it can be taken into consideration for awarding the compensation to that effect even without examining the concerned witnesses. In this matter, the learned Tribunal appears to have exhibited those medical prescriptions and bills, but did not consider it in award and compensation to that effect. Thus, the learned Tribunal has definitely erred in this aspect.

8. Though the judgments relied upon by the appellant were not in existence when the present claim petition was decided by the learned Tribunal, but it has been settled by the Hon'ble Apex Court that these judgments can be applied for assessing the just compensation in the pending cases or even in the pending appeals. The judgment of the Hon'ble Apex Court in the case of ***Raj Kumar*** (supra) is the land-mark judgment, whereby a specific method of calculating compensation is given. Though the learned counsel for the appellant also relied upon the judgment of the Hon'ble Apex Court in the case of ***Erudhaya Priya*** (supra), but the judgment in the case of ***Raj Kumar*** (supra) is the basic judgment, wherein all the heads covering pecuniary damages and non-pecuniary

damages are considered. Therefore, I have to calculate the compensation by considering the said judgment.

9. In the aforesaid judgment i.e. in the case of **Raj Kumar** (supra) it is observed in para 6 as follows :

*"6. The heads under which compensation is awarded in personal injury cases are the following:*

***Pecuniary damages (Special Damages)***

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.*
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

- (a) Loss of earning during the period of treatment;*

- (b) Loss of future earnings on account of permanent disability.*

- (iii) Future medical expenses.*

***Non-pecuniary damages (General damages)***

- (iv) Loss of amenities (and/or loss of prospects of marriage)*
- (v) Loss of expectation of life (shortening of normal longevity).*

*In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities*

*(and / or loss of prospects of marriage) and loss of expectation of life."*

Thus, the aforesaid heads are available to us for calculating the just compensation in the instant matter.

10. Admittedly, the appellant has not examined any witness from the medical field to substantiate his claim that he suffered permanent disability to the extent of 40%. It is to be noted here that the disability certificate at Exhibit-35 is not relied upon by the learned Tribunal for want of examination of the doctor, who issued it. On going through the record and proceedings, it appears that though the said certificate is marked as Exhibit-35, but on perusing the evidence on record of the appellant, it should have been marked Exhibit-34, wherein disability of 40% of permanent nature has been shown. Exhibit- 35 collectively is given to the prescription and medical bills, which are not considered by the learned Tribunal. I am now concerned with the disability certificate, wherein 40% permanent disability is shown. However, since the appellant has failed to examine the doctor or the medical officer, who had issued the said disability certificate, the percentage of such disability could not be proved. Further, it is also inconclusive as to whether the percentage of such disability to the extent of 40% was to the extent of whole body or confined to that particular limb only. Moreover, in absence of such medical evidence, functional disability of the appellant also can not be ascertained, which is significant to arrive at appropriate compensation by assessing the future loss of income. However, by considering the nature of injuries sustained by the appellant and considering the aspect that the appellant must have recovered

from those injuries, it can safely be inferred that the appellant must have suffered from 5% functional disability on permanent basis.

11. Admittedly, nothing is produced on record about the income of the appellant, but considering his notional income to the tune of Rs.3,000/- per month, his future loss of income can be determined. Thus, applying percentage of functional disability to the extent of 5%, monthly loss of income of the appellant comes to Rs.150/- per month and thus, Rs.1,800/- p.a. Further the respondents have not disputed the age of the appellant being shown of 26 years on the day of the accident and therefore, multiplier of 17 as per the observation of the Hon'ble Apex Court in the cases of *Sarla Verma vs. DTC, (2009) 4 SCC 362* and *National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680* is applicable. As such, when such multiplier is applied to the annual income of the appellant, the future loss of income comes Rs.30,600/- (150 X 12 X 17). Further, considering the documents in respect of the medical expenditure of Rs.47,652/- at Exhibit-35 collectively, the said amount can be granted to the appellant. In addition to these amounts, a lump-sum amount of Rs.10,000/- also can be awarded to the appellant on account of pain and sufferings. Therefore, considering these aspects, the appellant is entitled for compensation as mentioned below :

|      |                       |   |                    |
|------|-----------------------|---|--------------------|
| i)   | Future loss of income | : | Rs.30,600/-        |
| ii)  | Medical expenses      | : | Rs.47,652/-        |
| iii) | Pain and sufferings   | : | Rs.10,000/-        |
|      | <b>Total</b>          | : | <b>Rs.88,252/-</b> |

12. The learned Tribunal has awarded interest on the compensation @ 9% p.a. However, since this claim is being decided in the year, 2023, the prevailing rate of interest @ 6% p.a. will be applicable on the enhanced amount of compensation. Therefore, the appellant is entitled for total compensation of Rs.88,252/- (including the amount under Section 140 of M. V. Act towards 'No Fault Liability'). It appears that the appellant has already received the compensation granted by the learned Tribunal of Rs.47,000/-. It needs to be deducted from the aforesaid amount of compensation. As such, the appellant is entitled for enhanced compensation of Rs.41,252/- alongwith interest @ 6% p.a. from the date of petition till its realization.

13. Resultantly, following order is passed :

### **O R D E R**

- I) The appeal is hereby partly allowed.
- II) Respondent Nos.1 and 2 shall jointly and severally pay the enhanced compensation amount of Rs.41,252/- (Forty one thousand two hundred fifty two) to the appellant alongwith interest @ 6% p.a. from the date of the petition till its realization, within three months from the date of this order.
- III) Award be modified accordingly.
- IV) Parties shall bear their own costs.

**(SANDIPKUMAR C. MORE, J.)**