

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

**FIRST APPEAL NO.1278 OF 2010**

Master Swapnil Satish Chaudhari  
Age: 11 years, Occu: Education,  
Minor Through his natural guardian  
Satish Shivilal Chaudhari  
Age: 42 years, Occu: Barber,  
R/o: Akole, Tq. Akole,  
Dist. Ahmednagar

**... Appellant  
[Orig. Claimant]**

**Versus**

1. Smt. Kusumbai D. Jadhav  
Age: Major, Occu: Transport Business,  
R/o: Udhyog Bhavan, Sinnar,  
Dist. Nashik

2. The United India Insurance Co. Ltd.  
Through Branch Manager,  
United India Insurance Co. Ltd.  
Sangamner, Karam Hotel,  
Tq. Sangamner, Dist. Ahmednagar

**... Respondents**

...

Mr. R. K. Temkar, Advocate for the Appellant  
Mr. A. B. Gatne, Advocate for respondent no.2  
Respondent No.1 Served

...

**CORAM : S. G. CHAPALGAONKAR, J.**

**RESERVED ON : 7<sup>th</sup> July, 2023**

**PRONOUNCED ON : 17<sup>th</sup> July, 2023**

**JUDGMENT :**

1. The appellant / original claimant aggrieved by the assessment of

compensation under the award dated 18/01/2010, passed by the Motor Accident Claims Tribunal at Sangamner, District Ahmednagar [for short 'the Tribunal'] in Motor Accident Claim Petition [MACP] No.31/2003, approaches this Court under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short] seeking enhancement of compensation.

2. The appellant / original claimant suffered injuries in an accident dated 27/02/2003 while he was proceeding on the motorcycle with his father. The motorcycle was dashed by a crane bearing Registration No. MH-15-R-5337. As a result of the accident, the claimant was seriously injured. During the medical treatment, his left wrist was amputated and the right thumb was also crushed. The claimant suffered 70% permanent disablement. At the time of accident, the claimant was aged about 4 years and suffered permanent disablement that is quantified to 70%.

3. The claimant approached the Tribunal vide MACP No.31/2003 under Section 166 of the Act through his father to raise the claim of Rs.10,00,000/- [Rupees Ten Lakhs] from the owner and insurer of the offending vehicle. The Tribunal accepted the fact that the claimant has suffered 70% permanent disablement. However, recorded finding of contributory negligence against his father / motor cycle driver to the extent of 20% and passed an award of Rs.3,38,000/- along with interest @ 9% per

annum from the date of filing the claim petition. Therefore, the aggrieved claimant seeks enhancement of compensation in this appeal.

4. Notice of this appeal was served upon the respondents. By the order dated 07/06/2022, the record and proceeding were called and the appeal was placed for final hearing. The learned Advocates appearing for the respective parties advanced their submissions on the issue of negligence and assessment of compensation.

5. Mr. Temkar, the learned Advocate appearing for the appellant would submit that the appellant / claimant was aged about four years at the time of accident. He suffered amputation of his left wrist and also crush injury to right hand thumb. The Tribunal has rightly accepted the permanent disablement to the extent of 70%. However, assessment of compensation is made based on notional income @ Rs.15000/- per annum, which is apparently unjustified. He would further submit that paltry sum is awarded towards the compensation under non-pecuniary heads. Considering the nature of disability suffered by the claimant, just compensation ought to have been granted.

6. Mr. Temkar, the learned Advocate appearing for the appellant relied upon the judgment of the Supreme Court in the matter of **Master Ayush Vs. Branch Manager, Reliance General Insurance Company Limited and Anr.**

reported in **(2022) 7 SCC 738** and also the judgment of this Court in the matter of **Ketaki Milind Kulkarni Vs. Bajirao Dnyandeo Patil and Another** reported in **2021 (1) Mh.L.J. 459** and submits that the claimant is entitled for enhanced compensation. Mr. Temkar, learned Advocate appearing for the appellant further submits that the claimant was a pillion rider on the motorcycle along with his father. Although the claim is instituted through his father, the case could not have been considered by applying principles of contributory negligence. No fault can be attributed against the claimant who was the pillion rider and therefore, the case is governed by the principles of composite negligence.

7. Per contra, Mr. Gatne, learned Advocate appearing for the respondent – insurance company would justify the award. He submits that the accident in question occurred in the year 2003. The assessment of compensation has been made by the Tribunal on the basis of value of money as on date of accident. The assessment of compensation must relate back to the date of accident. Merely because, the proceeding for compensation is pending for twenty years, the claimant cannot seek assessment of compensation as per present inflated valuation of money. He would also submit that the Tribunal has assessed the compensation on all the possible heads recognized for injury claims. He would further submit that since the claimant was aged about four years, the Tribunal has rightly resorted to the schedule under Section 163-A of the Act to adopt the notional income @ Rs.15000/- per

month. He would further submit that the Tribunal has rightly considered contributory negligence of the motorcycle rider / father of the claimant in the cause of accident and deducted commensurate amount from the assessed compensation. He, therefore, urged that the appeal sans merit.

8. Having considered the submissions advanced by the learned Advocates appearing for both the sides and on perusal of the record with their able assistance, it can be gathered that, at the time of accident claimant was pillion rider on motorcycle along with his father. The tribunal assumed contributory negligence of father of claimant i.e. motorcycle rider and deducted 20% amount of assessed compensation on that count. It is trite that principle of contributory negligence can be invoked only in the claim of contributor in cause of accident. In facts of case even it is assumed that rider of motorcycle was contributor in accident, the claimant pillion rider cannot be made to suffer. As far as case of claimant / pillion rider is concerned, his case would be governed by principle of composite negligence. Hence this court holds that Tribunal felled in manifest error while deducting 20% compensation amount by applying principle of contributory negligence in present case. In that view of the matter, liability of respondents would be absolute to pay assessed compensation.

9. There is no dispute on the point of injuries suffered by claimant and consequential disabilities suffered by him. The Tribunal based on the

medical evidence concluded that the claimant has suffered 70% permanent disablement as assessed by the qualified medical practitioner. There is no dispute that left hand of the claimant was amputated from the wrist and his right thumb was crushed. The fallout of such disability would render the functional disability to the claimant at least commensurate to the permanent disablement suffered by him.

10. It is true that, the accident occurred in the year 2003. The present claim is filed under Section 166 of the Act. The Tribunal, in such case, ought to have fixed the notional income of the claimant at least as per minimum wages prevailing at the relevant time. This Court quantifies the minimum wages @ Rs.30000/- per annum in the year 2003 as per notifications issued by government. Since the claimant has suffered 70% permanent disablement, commensurate loss of earning can be presumed in facts of this case. Similarly, loss of future earning will have to be assessed by applying multiplier method. The multiplier of '15' can be suitably adapted to the age of four years taking guideline from Second schedule under M. V. Act of 1988. Therefore, the compensation of Rs.3,15,000/- [Rupees Three Lakhs Fifteen Thousand Only] can be assessed towards future loss of earning. Further addition of 40% is required to be made towards future prospects in the aforesaid amount.

11. The Supreme Court of India in the matter of **Helen C. Rebello (Mrs) and Ors. Vs. Maharashtra State Road Transport Corporation and Anr.** reported in **(1999) 1 SCC 90** as well as **Kajal Vs. Jagdish Chand and Others** reported in **(2020) 4 SCC 413** laid down the parameters for the assessment of compensation in the injury claim out of motor accidents. In the matter of **Kajal Vs. Jagdish Chand and Others (Supra)**, the Supreme Court observed in Paragraph No.6 of the judgment as under:

“6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.”

12. Considering the aforesaid observations, the claimant needs to be compensated for various losses. On perusal of the judgment of the Tribunal it can be observed that although, the compensation under various heads has been assessed, paltry sums are awarded against major heads. Considering the nature of disability, the compensation requires to be substantially enhanced in tune with recent pronouncements on subject by Supreme Court. It is trite that, the permanent disablement, itself is approved as an

independent head for grant of compensation. However, nothing has been granted by the Tribunal on that count. While assessing just compensation the value of money as on date of accident and inflation will have to be kept in mind. Even interest on enhanced compensation amount needs to be awarded in exercise of discretion u/s 171 of the MV Act, taking note of prevailing rates of interests during period of pendency of the proceeding. This court hold that it would be appropriate to grant interest @8% on enhanced compensation amount.

13. In light of the aforesaid observations, this court finds that claimant would be entitled for the compensation as under:

| Sr. Nos. | Heads                                                                              | Amount                |
|----------|------------------------------------------------------------------------------------|-----------------------|
| 1.       | Loss of future earning                                                             | 3,15,000/-            |
| 2.       | Addition of 40% towards loss of future prospects                                   | 1,26,000/-            |
| 3.       | Medical bills                                                                      | 57,000/-              |
| 4.       | Special diet                                                                       | 25,000/-              |
| 5.       | Attendant charges                                                                  | 25,000/-              |
| 6.       | Conveyance charges                                                                 | 25,000/-              |
| 7.       | Pain and suffering                                                                 | 1,00,000/-            |
| 8.       | Loss of amenities in life, Loss of expectation of life, hardship and mental stress | 2,00,000 /-           |
| 9.       | Permanent disablement                                                              | 2,00,000 /-           |
| 10.      | Loss of marriage prospects                                                         | 1,00,000 /-           |
|          | <b>TOTAL</b>                                                                       | <b>Rs.11,73,000/-</b> |

**(Total Eleven Lakhs Seventy-Three Thousand Only)**

14. In view of the aforesaid calculations, the appeal deserves to be partly allowed and the judgment passed by the Tribunal needs to be modified

accordingly. Hence, this Court proceed to pass the following order:

**ORDER**

- (i) Appeal is partly allowed.
- (ii) The opponent nos. 1 and 2 shall jointly and severally liable to pay the applicant the compensation of Rs.11,73,000/- [Rupees Eleven Lakhs Seventy-Three Thousand Only] [inclusive of NFL] along with interest @ 8% per annum from date of petition.
- (iii) The compensation amount paid / disbursed under the impugned judgment and award passed by the Tribunal shall be appropriated.
- (iv) On payment of deficit court fees, if any, modified the award be drawn in terms of this order.
- (v) On deposit of compensation, it be disbursed to claimant through bank transfer as per account details submitted by his for that purpose.

**[S. G. CHAPALGAONKAR]  
JUDGE**

Sameer