

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

FIRST APPEAL NO.171 OF 2002

Sou. Santoshi Lakhimchand Agrawal (died)
Through L.Rs.

1. Soniya w/o Sunil Bhutiya,
Age : 40 years, Occu.: House wife,
R/o.: Near Dalda Factory- Latur,
Distruct : Latur
2. Rakhi w/o Jitesh Agrawal,
Age : 35 years, Occu.: House wife,
R/o.: Near Mahadeo Temple,
Lokhand Galli,
Gulbarga, Karnataka State
3. Nilima w/o Niraj Agrawal,
Age : 32 years, Occu.: House wife,
R/o.: Nigdi- Pune, Dist. Pune
4. Ashwini w/o Nitin Agrawal,
Age : 30 years, Occu.: House wife,
R/o.: Agrawal Colony, Kasarwadi,
Pune, District : Pune.

.... APPELLANTS

VERSUS

1. Suresh Kishanrao Chitewar
(Dismissed)
2. Ramesh Ramkishanrao Niraj,
Age : 45 years, Occu.: Business,
R/o.: Market Yard Gangakhed,
Tq.: Gangakhed, District : Parbhani
3. United India Insurance Co. Ltd.,
Branch Parbhani, Through its
Branch Manager, Branch Office,
Hanuman Chowk Latur,
District : Latur

... RESPONDENTS

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Advocate for Appellants : Mr. B. R. Kedar
Advocate for Respondent No.3 : Mr. A. B. Gatne

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**WITH
FIRST APPEAL NO.172 OF 2002**

Sachin Lakhimchand Agrawal
(died) Through: L.Rs.

1. Soniya w/o Sunil Bhutiya,
Age : 40 years, Occu.: House wife,
R/o.: Near Dalda Factory- Latur,
Distruct : Latur
2. Rakhi w/o Jitesh Agrawal,
Age : 35 years, Occu.: House wife,
R/o.: Near Mahadeo Temple,
Lokhand Galli,
Gulbarga, Karnataka State
3. Nilima w/o Niraj Agrawal,
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4. Ashwini w/o Nitin Agrawal,
Age : 30 years, Occu.: House wife,
R/o.: Agrawal Colony, Kasarwadi,
Pune, District : Pune.

.... APPELLANTS

VERSUS

1. Suresh Kishanrao Chitewar,
Age : 35 years, Occu.: Driver,
R/o.: C/o Ramesh Ramkishan Niraj,
Market Yard Gangakhed,
Tq. Gangakhed, Dist. Parbhani
2. Ramesh Ramkishanrao Niraj,
Age : 45 years, Occu.: Business,
R/o.: Market Yard Gangakhed,
Tq.: Gangakhed, District : Parbhani

3. United India Insurance Co. Ltd.,
Branch Parbhani, Through its
Branch Manager, Branch Office,
Hanuman Chowk Latur,
District : Latur

... RESPONDENTS

....

Advocate for the Appellants : Mr. B. R. Kedar
Advocate for Respondent No.2 : Mr. J. R. Patil
Advocate for Respondent No.3 : S.V. Kulkarni

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 30/11/2022

PRONOUNCED ON : 07/01/2023

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JUDGMENT :

1. The appellant in First Appeal No. 171 of 2002, is the mother of appellant in First Appeal No. 172 of 2002 and both of them, have challenged the common judgment and award dated 06/09/2001 passed by the learned Member of MACT, Latur (hereinafter referred to as 'the learned Tribunal') in their respective Motor Accident Claim Petition Nos.457 of 1997 and 451 of 1997 for enhancement of the compensation.

2. Both the appellants were travelling alongwith one Lakhamchand Indraj Agrawal being family members in a Maruti van bearing registration No. MVU-472 from Tuljapur to Latur on 25/06/1995. One Jeep bearing No. MH-24-A-6411 coming from opposite direction in high speed gave dash to the aforesaid Maruti van at about 2.30 p.m. near one Ashram School. Due to the said accident, both the appellants as well as Lakhamchand got injured. Appellant Santoshi in First Appeal No. 171 of 2002 had claimed total compensation of Rs.1,50,000/-, whereas appellant Sachin in

First Appeal No. 172 of 2002 had claimed compensation of Rs.2,50,000/- in the learned Tribunal from the present respondents, who are the respective driver, owner and the insurer of the aforesaid offending jeep. The learned Tribunal vide impugned common judgment, awarded total compensation of Rs.1,00,000/- inclusive of NFL amount to the appellant Santoshi, whereas appellant Sachin got compensation amount of Rs.1,10,000/- inclusive of NFL amount alongwith interest @9% p.a. from the date of petition till its realization.

3. The learned counsel for both the appellants submitted written notes of argument in both the appeals and thereby claimed that the learned Tribunal has awarded meager amounts of compensation to the appellants by ignoring the settled principle of assessment of compensation in injury claims. He also relied on the judgment of Hon'ble Apex Court reported in ***2013 DGLS(SC) 464 in case of G. Ravindranath @ Chowdary vs. E. Srinivas and another.***

4. On the contrary, the learned counsel for the respondent / insurance company as well as the respondent / owner supported the impugned judgment and submitted that the learned Tribunal has properly assessed the quantum of compensation and therefore, there is no need to interfere with that judgment.

5. With the help of the learned counsel for the appellants and respondents, I have gone through the impugned judgment and the record and proceeding of original claim petition filed by appellant Sachin.

6. On perusal of the impugned judgment, it is evident that the learned Tribunal has awarded Rs.20,000/- against medical expenses, special diet, and conveyance; Rs.10,000/- for the help of attendant, Rs.40,000/- under the head of pain and suffering and Rs.30,000/- against future loss considering the percentage of disability. As such, the learned Tribunal has granted compensation of Rs.1,00,000/- inclusive of NFL amount of Rs.25,000/- to appellant -Santoshi.

7. So far as claim of appellant Sachin is concerned, the learned Tribunal has granted Rs.25,000/- towards medical expenses, conveyance, special diet and attendance; Rs.15,000/- on account of loss of academic year, Rs.35,000/- under the head of pain and suffering and Rs.35,000/- against future loss considering the percentage of disability. As such, the learned Tribunal has granted compensation of Rs.1,10,000/- inclusive of NFL amount of Rs.25,000/- to appellant Sachin.

8. The learned counsel for the appellants has relied upon the aforesaid judgment, wherein the Hon'ble Apex Court has referred its own judgment in the case of ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343***, wherein various heads under which the compensation is awarded in personal injury cases are mentioned and the same are categorized as follows :

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 earning on account of permanent disability.*
- (iii) Future medical expenses.*

Non-pecuniary damages (General Damages) :

- (iv) Damages for pains, sufferings and trauma as a consequences of the injuries.*
- (v) Loss of amenities (and / or loss of prospects of marriage).*
- (vi) Loss of expectation of life (shortening of normally longevity).*

9. Though the aforesaid judgment was not in existence when the present claim petitions were decided, but as per the settled position the aforesaid heads are still available for fresh calculation for the pending motor accident claims and appeals thereof. In view of the same, I have to calculate the compensation amount in respect of the appellants afresh.

10. The amount of Rs.70,000/- granted to appellant Santoshi by the learned Tribunal under the heads of medical expenses, special diet, conveyance, help of attendant and pain and suffering appears proper by considering the nature of injuries sustained by her and the period of medical treatment including the medical expenditure. Likewise, the amount of Rs.75,000/- granted to the appellant Sachin by the learned Tribunal under the heads of medical expenses, conveyance, special diet and attendance, loss of academic year and pain and suffering also appears in consonance with the documents in respect of his medical expenses and the nature of injuries sustained by him. The learned Tribunal has

granted certain amount to both the appellants under the head of future loss of income. However, the impugned judgment indicates that despite considering the disability certificates of the appellants on record the learned Tribunal did not assess their loss of future income by taking into consideration their monthly income, percentage of disability and the appropriate multiplier and has granted lump-sum amounts under the aforesaid head. As per the observation of the Hon'ble Apex Court in the case of ***Raj Kumar vs. Ajay Kumar*** (supra) referred in the judgment relied upon by the learned counsel for the appellants the future loss of income needs to be determined by considering the percentage of disability and the income of the injured by applying appropriate multiplier to it.

11. So far as appellant Santoshi is concerned, it was contended that she was earning Rs.5,000/- per month being an STD operator. However, there is nothing on record to substantiate such contention. Therefore, considering the year of accident being 1995, her notional income can be taken as Rs.2,000/- per month. Further, though the disability certificate of appellant Santoshi indicates that she sustained 25% permanent disability due to the accidental injuries, but she did not examine the doctor, who issued such disability certificate. Therefore, it is very difficult to assess whether the said percentage of disability was in respect of whole body or to the extent of that particular part of the body. Moreover, it is also not brought on record as to what was the functional disability to her. Therefore, considering the nature of injuries sustained by her, the permanent disability suffered by her can be determined to the extent of 20%. After applying such percentage of disability to her income multiplied by the proper multiplier, which

is 15 in respect of her age of 40 years. The amount of future loss of income comes to Rs.72,000/- (Rs.400 X 12 X 15).

12. Similarly, the impugned judgment also indicates that the amount of Rs.75,000/- granted to appellant Sachin under the heads of medical expenses, conveyance, special diet, attendance, loss of academic year and pain and suffering appears proper and in consonance with the documents available on record to that effect. However, the learned Tribunal like appellant Santoshi also did not assess the future loss of income in respect of appellant Sachin by considering his percentage of disability and income by applying appropriate multiplier. It appears that appellant Sachin was a college going student and there is no proof of his income on record and therefore, considering the year of accident being 1995, his notional income can be taken as Rs.2,000/- per month. Though the permanent disability certificate issued by the doctor on record indicates that he suffered permanent disability to the extent of 40%, but nothing is there to show whether it was in respect of whole body or to the extent of only affected part of body. Moreover, since the doctor is not examined, his functional disability also could not be ascertained. Therefore, his permanent disability can be taken as 25% for the purpose of calculating his future loss of income. If the said percentage of his permanent disability is applied to his monthly income, then his monthly loss of income comes to Rs.500/- and annual loss comes to Rs.6,000/-. If an appropriate multiplier of 18 to the age of Sachin of 19 years is applied to the aforesaid annual loss, the future loss of income of Sachin comes to Rs.1,08,000/-. Thus, I assess the compensation in respect of appellant Santoshi Lakhimchand Agrawal and Sachin Lakhimchand Agrawal as follows :

Appellant Santoshi Lakhimchand Agrawal :

- i) Rs.20,000/- for medical expenses, special diet and conveyance;
 - ii) Rs.10,000/- for help of attendant;
 - iii) Rs.40,000/- for pain and suffering and
 - iv) Rs.72,000/- for future loss of income
- Total Rs.1,42,000/-**

Appellant Sachin Lakhimchand Agrawal :

- i) Rs.25,000/- for medical expenses, special diet, conveyance and attendance;
 - ii) Rs.15,000/- for loss of academic year;
 - iii) Rs.35,000/- for pain and suffering and
 - iv) Rs.1,08,000/- for future loss of income
- Total Rs.1,83,000/-**

Thus, both the appellants are entitled for the aforesaid compensation alongwith interest @9% p.a. from the date of petition till its realization.

13. In view of the same, following order is passed.

O R D E R

- I) Both the appeals are partly allowed.
- II) Appellant Santoshi Lakhimchand Agrawal (now deceased) is entitled for total compensation of Rs.1,42,000/- (Rs. One lakh forty two thousand) inclusive of NFL amount alongwith interest @ 9% p.a. from the date of claim petition till its realization.

- III) Appellant Sachin Lakhimchand Agrawal (now deceased) is entitled for total compensation of Rs.1,83,000/- (Rs. One lakh eighty three thousand) inclusive of NFL amount alongwith interest @ 9% p.a. from the date of claim petition till its realization.
- IV) The respondents shall jointly and severally pay the aforesaid compensation amounts after deducting the amounts already paid, if any, within three months from the date of this order.
- V) On deposit of such balance amount of compensation, the respective appellants being legal representatives of original claimants i.e. Santoshi Lakhimchand Agrawal and Sachin Lakhimchand Agrawal are at liberty to withdraw the same.
- VI) Award be prepared accordingly.
- VII) Both the first appeals are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)