

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

FIRST APPEAL NO. 1479 OF 2004

Jayprakash Ishwarlal Mahale
Age: 29 years, Occu: Occupation
Government Contractor,
R/o: Station Road, Near Kadri Hospital,
Dhule

... Appellant
[Orig. Claimant]

Versus

1. P. Balasubramanian s/o Periyasami
Occupation : Truck Transport,
R/o: 15/12-A, Genesapuram,
Manappalli, Post, Paramathi,
Velur, Namakkal, Dist. Namakkal
(Tamilnadu State)

2. National Insurance Company
Limited, Dhule Branch Office,
Nashikkar Shopping Complex,
Ranapuratap Chowk,
Dhule

... Respondents
[Orig. Opponents]

...

Mr. M. H. Patil, for the Appellant
Respondent No.1 served
Mr. S. V. Kulkarni, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10.02.2023

PRONOUNCED ON : 20.02.2023

JUDGMENT :

1. The appellant/original claimant approaches this Court under
Section 173 of Motor Vehicles Act, 1988 [hereinafter referred to as 'the

Act' for short], thereby assailing the judgment/award dated 07.04.2004, passed by the Motor Accident Claim Tribunal, Dhule, in Motor Accident Claim Petition (MACP) No.324/2000. The Tribunal passed an award of Rs.2,11,800/- in favour of the claimant. However, the claimant seeks enhancement by way of present appeal.

2. The brief facts, giving rise to the present appeal are as under :

3. The claimant was travelling in Ambassador car bearing Registration No.MH-13/C-0067 from Mumbai to Pune. A truck bearing Registration No.TN-37/D-8519 came from opposite direction and collided the car. The claimant suffered multiple injuries i.e. fractures of right and left humerus shaft and dislocation of right shoulder. The Panvel Police Station registered Crime No.02/2000 against the truck driver.

4. The claimant instituted MACP No.324/2000 before the Tribunal at Dhule under Section 166 of the Act claiming compensation of Rs.5,00,000/- from the owner and insurer of offending truck. He contends that he was aged 25 years at the time of accident. He is a Civil Engineer and suffered 70% permanent disablement causing the loss of future earnings. Prior to accident, he was working as a Civil Contractor and earning Rs.10,000/- per month.

5. The respondent no.1 failed to contest the said claim petition. However, respondent no.2 – insurer of truck filed a written statement and

pleaded that car driver was responsible for the accident. The rest of the claims regarding injuries suffered by the claimant, his earning or the permanent disablement were denied. The claimant recorded his own evidence before the Tribunal and relied upon the FIR, spot panchnama, injury certificate and disability certificates issued by Civil Surgeon, Dhule as well as Civil Surgeon, Nandurbar, which certify 70% permanent disablement. The claimant further relied upon the income tax clearance certificate, for assessment year 2001-2002, and 2002-2003, showing his earning of Rs.53,000/ and Rs.63, 310/- respectively.

6. The Tribunal, after considering the evidence on record concluded that both vehicle drivers have equally contributed in the cause of accident. The contribution of truck driver is held to the extent of 50% in the cause of accident and fixed the liability of respondents to that extent only.

7. The claimant was travelling in car along with his friend Dr. Sandeep Thorat. He was on the driver seat. Since the claimant was occupant of car at the time of accident, the case would be governed by principle of composite negligence. Further FIR shows that offence was registered against the truck driver. The claimant has exercised his option to file the claim against owner and insurer of the truck. No evidence is brought on record to controvert the contents of the FIR. In that view of

the matter, the Tribunal ought to have fixed the entire liability to pay compensation against respondent nos.1 & 2 i.e. owner and insurer of the truck.

8. The Hon'ble Supreme Court in the matter of **Khenyei Vs. New India Assurance Company Limited and Ors.** reported in **2015 (9) SCC 273** has ruled out that in case of composite negligence, the claimant has choice to prosecute his remedy either to proceed against all or anyone of the joint tortfeasor, when accident is attributable to the drivers of multiple vehicles involved in the accident. In facts of the present case, when FIR was registered against the truck driver, the claimant has rightly exercised his choice and prosecuted his remedy against the owner and insurer of the truck. The Tribunal, erroneously deducted 50% of the compensation amount observing that the claimant has not added owner and insurer of the car as party to the claim petition.

9. Insofar as the assessment of compensation is concerned, Mr.M. H. Patil learned advocate appearing for the appellant would submit that the Tribunal ought to have considered the loss of earning commensurate to the percentage of permanent disablement as assessed by the Civil Surgeon. He would submit that the claimant has suffered 70% permanent disablement. Therefore, the loss of future earning ought to have been considered to that extent. He would further submit that the

claimant was engaged in the contractor-ship and he was earning at least Rs.10,000/- per month.

10. The Tribunal after appreciation of evidence observed that the income of the claimant has been increased even after the accident and his business was continued with prosperity. The income tax clearance certificate produced at Exhibit-38 supports such finding recorded by the Tribunal. In that view of the matter, it is difficult to accept the contention of the claimant to consider total loss of future earnings. The Tribunal assessed compensation considering the various aspects of the matter. The medical expenses of Rs.60,000/- has been awarded based on actual bills produced on record. The amount of Rs.3,600/- is awarded towards ambulance charges as per bill. The amount of Rs.40,000/- has been granted towards future medical treatment which includes the surgery for removal of steel implants from body of the claimant. The compensation of Rs.70,000/- has been awarded towards pains and suffering. The Tribunal has further awarded Rs.3,00,000/- towards the loss of physical capacity or amenities in life. The total assessment of compensation is arrived at Rs.4,73,600/-. I do not find reason to reassess or replace compensation granted on such heads.

11. The claimant has suffered 70% permanent disablement as per assessment made by the Civil Surgeon. He was just 25 years of age and

was a budding contractor. In this background, independent compensation of Rs.1,00,000/- needs to be granted towards permanent disablement in addition to the compensation that has been assessed by the Tribunal. The Supreme Court of India has recognized permanent disability as an independent head for grant of compensation to victim of accident. The Tribunal has not granted such compensation to the claimant against permanent disability. The claimant is also entitled for additional compensation towards transportation charges, attendant charges and special diet during the course of his hospitalization which can be quantified Rs.26,400/-.

12. In that view of the matter, the claimant would be entitled for total compensation of Rs.6,00,000/- jointly and severally from respondent nos.1 & 2. The award passed by the Tribunal is accordingly modified to that extent. Hence, I pass the following order:

ORDER

- (i) The appeal is allowed.
- (ii) The respondent nos.1 & 2 shall jointly and severally pay Rs.6,00,000/- to the claimant/appellant along with interest @ 8% per annum from the date of petition i.e. from 01.04.2000 till realization of the award.
- (iii) The amount of compensation paid/released by respondent nos.1 & 2 as per the award of Tribunal shall be appropriated against the compensation as indicated above.

(iv) The respondent nos.1 & 2 shall deposit the compensation amount within a period of two months with the Motor Accident Claim Tribunal, Dhule. On deposit of such compensation, the claimant/appellant would be at liberty to withdraw the same on payment of deficit court fees if any.

(v) Award be drawn accordingly.

(S. G. CHAPALGAONKAR, J.)

Sameer