

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

FIRST APPEAL NO.2357 OF 2018

Salim S/o Mustaga Auti,
Age 22 yers, Occ. Education,
R/o. Shivpuri Road, Omerga, Tq. Omerga,
Dist. Osmanabad.

..Appellant
(Orig. Claimant)

Versus

1. Sunil S/o Nagnath Munjulkar,
Age: Major, Occu.: Business
R/o 78/2 Bhawani Peth, Modivast,
Solapur Tq and Dist Solapur,
(Owner of Tipper No.MH-03-N-3275)

2. The National Insurance Co. Ltd.
Through the Divisional Manager,
The National Insurance Co. Ltd,
Subra Towers, Datta Chowk, Solapur,
(Insurer of Tipper No.MH-03-N-3275)

..Respondents
(Orig. Respondents)

...

Mrs. Anjali Dube (Bajpai), Advocate for the Appellant.
Mr. A. B. Gatne, Advocate for Respondent No.2.

...

CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON : 02nd AUGUST, 2023.
PRONOUNCED ON : 18th AUGUST, 2023.**

JUDGMENT:-

1. The appellant/original claimant aggrieved by the judgment and award dated 26.03.2018 passed by the Motor Accident Claims Tribunal, Omerga, Dist. Osmanabad in Motor Accident Claim Petition No.16/2016 approached this Court under Section 173 of the Motor Vehi-

cle Act. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The claimant had approached the Tribunal under Section 166 of the Motor Vehicle Act claiming compensation towards accidental injury and permanent disablement suffered by him in an accident dated 03.10.2015. The claimant contends that he was riding motorcycle at the time of accident. The offending Tipper gave forceful dash to the motorcycle. Resultantly, he suffered injuries. He was treated as indoor patient at Ashwini Hospital at Solapur during the period from 03.10.2015 to 07.10.2015, where he was operated for bone comminuted fracture as well as injuries on head and right eye. Thereafter, he was again admitted at Sushrut Clinic at Solapur for a period from 23.10.2015 to 23.11.2015. The claimant contends that inspite long drawn medical treatment, he could not recover from the injuries and suffered permanent disablement. He was aged about 22 years at the time of accident and pursuing his education in 3rd year of Civil Engineering at Nagesh Karajgi Orchid College of Engineering and Technology, Solapur. The claimant further contends that he has also lost one year of his education and working capacity.

3. The claim was contested by the respondents i.e. owner and insurer of Tipper contending that the claimant himself was author of the accident. Rest of the contentions regarding occupation, age and income were denied. The claimant recorded his own evidence and relied upon evidence of Dr. Nitin Loharekar to prove the certificate of disablement of 39%. The Tribunal on assessment of the pleadings and evidence recorded finding that the accident occurred due to fault on the part of the Tipper driver and passed total award for Rs.3,13,500/- alongwith interest at the rate of 9% per annum in favour of the claimant.

4. Aggrieved by the assessment of the compensation, the claimant is before this Court.

5. Mrs. Dube (Bajpai), learned Advocate appearing for the claimant would submit that the claimant has suffered permanent disablement due to injuries suffered in the accident, however, the Tribunal awarded lump-sum compensation of Rs.40,000/- only. The paltry sum is awarded towards non-pecuniary losses. She would further submit that the claimant was 3rd year Engineering student, within a year or two, he would have been Engineering graduate and earning sizable salary. She would submit that the Tribunal wrongly observed that the claimant failed to prove future loss of earning, although, it could have been easily assessed on the basis of the evidence tendered into service.

6. Per contra, Mr. Gatne, learned Advocate appearing for the respondent-Insurance Company vehemently opposes the contention of the claimant. He would submit that nothing has been placed on record to show that the claimant has lost his earning capacity owing to the injuries suffered in the accident. He would criticize the evidence of PW-2 Dr. Nitin Loharekar for the reason that he has never treated the claimant and his assessment of disability is also unscientific. According to Mr. Gatne, no reliance can be placed on such evidence. He would submit that unless nexus between injuries and loss of earning capacity is established, compensation need not be assessed by applying multiplier method. He would justify the course adopted by the Tribunal while granting lump-sum compensation.

7. Having considered the submissions advanced, it is apparent that the contentious issue posed before this Court is regarding assessment of compensation. It is not in dispute that the claimant has suf-

ferred injuries in the accident involving vehicle owned and insured with respondents. Even, there is hardly any dispute on the point that claimant was prosecuting his education in 3rd year Engineering Course at Solapur. Perusal of treatment papers and discharge summary show that the claimant was treated at of Ashwini Hospital, where he was admitted with head injury, CLW over right eye brow and bone comminuted fracture T/F right side. The discharge card of Sushrut Clinic shows that he was treated during the period from 23.10.2015 to 23.11.2015. The medical bills regarding such treatment are also placed on record.

8. The claimant contends that he suffered permanent disablement to the extent of 39% as certified by PW-2 Dr. Loharekar. The certificate is placed at Exhibit-36. The evidence of PW-2 is recorded at Exhibit-45. He testified that on examination of the claimant he found the disability to the extent of 39%. According to his evidence, there is loss of 40% muscle of right thigh, which accounts for 12% disablement. Similarly, there is fiction of right knee with 30% restriction accounting for disability of 9%. Similarly, there is moderate pain, deep infection to bone, partial loss of sensation of foot, which account for 6% permanent disablement. In cross-examination he states that Neurologist will be in a position to effectively work out the disability. There is possibility of reduction of pain after treatment. However, he could not confirm, whether there is possibility of reduction in bone infection and loss of sensation. The Tribunal discarded this evidence mainly on the ground that he never treated claimant. This approach of the Tribunal cannot be justified. PW-2 is M.S. (Ortho), which means he is a qualified medical practitioner; therefore, his evidence could not have been totally discarded.

9. Pertinently, the evidence of PW-2 is not significant for assessment of loss of earning capacity. The break-up of the percentage of disability detailed in his evidence depicts that he has assessed limb-wise disability. Except the restriction of movement in right knee and loss of muscle of right thigh, other heads of disability cannot be assumed to be permanent in nature.

10. The claimant was pursuing his education in 3rd year Civil Engineering. Therefore, considering his prospective employment in the construction activities, the injury and disability suffered by him would definitely create obstacles. As indicated above, for wasting/loss of thigh muscle and fiction of right knee, the disability can be accounted for 21%. It would be appropriate to consider commensurate loss of earning in peculiar facts of this case.

11. As observed hereinabove, within next or two years the claimant would have acquired the graduation in Civil Engineering. Therefore, his immediate prospective income can be estimated to the tune of Rs.8000/- per month. Loss of earning to the claimant would be 21%. It would be appropriate to consider loss of future prospects at the rate of 40%. Therefore, monthly earning including future prospects of the claimant can be estimated to Rs.11,200/-. Annual income of the claimant including future prospects would come to $\text{Rs.11,200} \times 12 = \text{Rs.1,34,400/-}$. The future loss of earning capacity can be estimated to 21% of his total earning. Therefore, the total annual loss of future earning would come to $\text{Rs.1,34,400} \times 21/100 = \text{Rs.28,224/-}$. Considering the age of the claimant multiplier of 18 will have to be applied.

12. The claimant would also be entitled for the compensation towards medical expenses incurred by him and also the compensation to-

wards non-pecuniary heads, which can be worked out in tabular form as below:-

Sr. No.	Heads	Amount (Rs.)
1	Annual income of the claimant (Rs.8000/-) with addition of 40% future prospects Rs.11,200 x 12 =	Rs.1,34,400/-
2	Loss of earning per annum due to permanent disablement of 21% = $1,34,400 \times 21/100$ = Rs.28,224/-	Rs.28,224/-
3	Future loss of earning after applying multiplier of '18' (Rs.28,224,x 18)	Rs.5,08,032/-
4	Medical expenses as awarded by Tribunal	Rs.2,37,500/-
5	Permanent disablement	Rs.20,000/-
6	Pain, sufferings and loss of amenities-expectation of life	Rs.20,000/-
7	Attendant, diet and transportation	Rs.20,000/-
TOTAL		Rs.8,05,532/-

13. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be modified. Hence, following order: -

ORDER

- i. The Appeal is partly allowed.
- ii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.8,05,532/- (Rs. Eight Lakh Five Thousand Five Hundred Thirty Two only) to the claimant inclusive of amount of 'NFL' along with the interest @ 6% p.a. from the date of filing of the claim petition.
- iii. The compensation amount paid/disbursed in terms of the award passed by the Tribunal be appropriated.

- iv. Award be drawn up on payment of deficit court fees.
- v. On deposit of amount as per this award, it be disbursed to claimant through NEFT or Bank transfer directly in the account as per details supplied by the claimant.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023