

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

FIRST APPEAL NO.1609 OF 2022

1. Ashok s/o Keruba Doke
Age: 34 years, Occu: Mason Now Nill,
R/o Nirgudi (Budruk), Tq. Khultabad,
Dist. Aurangabad.

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

Versus

1. The Divisional Controller
Maharashtra State Road Transport Corporation, (MSRTC)
C.B.S. Road, Aurangabad

2. Har s/o Namdeo Chaudhary
Age:35 years, Occu: Driver
R/o House No.164, Near Vaishali Dhaba,
Bhakti Nagar, Pisadevi Road, Aurangabad
Now R/o: C/o: Respondent No.1

**... Respondent
[Orig. Respondents]**

...

Mr. A. P. Khedkar., Advocate for the Appellant
Mr. A. B. Dhongade, Advocate for respondent nos.1 and 2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th July, 2023

PRONOUNCED ON : 17th July, 2023

JUDGMENT:

1. The appellant / original claimant approaches this Court under Section 173 of the Motor Vehicle Act, 1988 [hereinafter referred to as 'the Act' for short], thereby impugning the judgment and award dated 31/05/2022

passed by the Motor Accident Claims Tribunal, Aurangabad [for short 'the Tribunal'] in Motor Accident Claim Petition [MACP] No.830/2018.

2. The appellant / claimant contends that on 18/08/2018, one S.T. Bus bearing Registration No. MH-06-BW-0521 dashed him causing multiple injuries. He had suffered Grade III compound fracture distal 1/3rd of femur on right side without distal neurovascular involvement and injuries on several parts of the body. He was hospitalized for the period from 19/08/2018 to 11/09/2018 and incurred the expenses of more than Rs.50,000/-. According to the claimant, he has suffered the permanent disablement of 40% and consequential loss of earning. The claimant contends that he was 30 years of age at the time of accident and working as a Mason to earn of Rs.20,000/- per month. He had, therefore, approached the Tribunal u/s 166 of the Act. However, the Tribunal passed an award of Rs.2,35,500/- as against his claim of Rs.7,00,000/-.

3. Mr. Khedkar, learned Advocate appearing for the appellant would submit that even for injury cases, the assessment of compensation needs to be made by applying multiplier method. In the present case, the Tribunal passed the award on lump-sum basis. He would submit that the evidence of PW-2, namely, Dr. Parmeshwar Jaiswal clearly depicts that the claimant has suffered 40% permanent disablement and it would be difficult for him to work as a Mason. The said evidence is not given weightage while

considering the claim of the appellant.

4. Mr. Dhongade, the learned Advocate appearing for respondent nos.1 and 2 would submit that the Tribunal has recorded reasons for not applying multiplier method in the facts of the case. He would submit that the evidence of the Doctor, particularly, cross-examination shows that the fractures are united and the injuries are healed. The claimant can walk without support. As such, there is no functional disability or loss of earning capacity. He would further submit that the appellant is adequately compensated for the permanent disablement and consequential losses. He would, therefore, urge to dismiss the appeal.

5. Having considered the submissions and after perusal of the evidence on record, it can be gathered that, the claimant has suffered permanent disablement to the extent of 40%. Even it is assumed that, he was a Labour, consequential loss of earning on account of permanent disablement will have to be assessed by applying multiplier method. The Tribunal has assumed that the functional disability or loss of income would not exist in the facts of the case. However, such observations are erroneous in light of specific statement of PW-2 Dr. Parmeshwar Jaiswal indicating that the claimant can do sitting job. The aforesaid statement can be interpreted to mean that claimant cannot do his normal work with the disability. However, Doctor in his cross examination admits that claimant can walk without support and his

fractures are healed. Considering the nature of injuries suffered by the claimant and admissions given by qualified medical practitioner, the loss of earning cannot be considered commensurate to the percentage of permanent disablement. In facts of case such loss can be reasonably assessed @ 25%.

6. So far as the income of the claimant is concerned, no evidence is brought on record regarding his actual earning. Except bare words of the claimant that he was working as a Mason, nothing is pressed into service to show that he was a skilled worker. Claimant could have examined his employer, contractor or at least co-worker to prove his nature of job and earning, in that view of the matter, his notional income will have to be assessed @ Rs.6000/- per month. The claimant is entitled for addition of 40% income by way of future prospects. The age of the claimant as per record appears to be 30 years. The multiplier of '17' would be applicable to his age. Therefore, the monthly loss of earning to the claimant would be 25% of Rs.8400/- Additionally, the claimant would be entitled for compensation towards non-pecuniary heads like loss of amenities in life, permanent disablement, pain and sufferings, special diet, attendant charges, loss of income during hospitalization and medical expenses. It would be proper to adjust the compensation of Rs.2,35,500/- as granted by the Tribunal against the aforesaid compensation heads.

7. In that view of the matter, the claimant would be entitled for the compensation as per following chart:

Sr. No.	Heads	Amount
1.	Monthly income	6000/-
2.	Addition of 40% towards future prospects (6000+2400 = 2400)	8400/-
3.	Monthly Loss of future earning @25%	2100/-
4.	Annual loss 2100x12	25200/-
5.	Multiplied by '17'	4,28,400/-
6.	Add non-pecuniary losses as assessed by Tribunal.	2,35,500/-
	Total	6,63,900/-

8. The award passed by the Tribunal is therefore, required to be modified as per the aforesaid calculations. Hence, this Court proceed to pass the following order:

ORDER

(i) Appeal is partly allowed.

(ii) The respondent nos.1 and 2 shall jointly and severally pay to the claimant/appellant total compensation of Rs.6,63,900/- [Rupees Six Lakhs Sixty Three Thousand Nine Hundred] [inclusive of NFL] along with interest @ 7% p.a. from date of petition.

(iii) The amount Paid / Disbursed under award of Tribunal be appropriated.

(iv) On depositing deficit court fees, if any, award be drawn up accordingly.

iv) Appeal is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer