IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1070 OF 2022

Haribhau s/o Laxman Tupsamindre
Age: 32 years, Occu: Nil,
R/o Vita (BN), Tq & Dist. Parbhani
Now at Rahul Nagar, Parbhani **... Appellant**
[Orig. Claimant]

Versus

1. Sk Ayyub Sk Shabbir
   Age: Major years, Occu: Business
   R/o Lahuji Nagar, Pathri,
   Tq. Pathri, District Parbhani
   (Owner of Jeep No MH 31, A 4870)

2. United India Insurance Company
   Ltd, through its branch Manager
   2nd floor, Dayawan Complex, Near
   Hotel Rajdhani, Station Road,
   Parbhani, Tq and Dist. Parbhani **... Respondents**
   [Orig. Respondents]

...

Mr. P. S. Agrawal, Advocate for the Appellant
Mr. A. N. Sabnis, Advocate for Respondent No.1
Mr. S. R. Bagal, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 07.08.2023

ORAL JUDGMENT :

1. The appellant / original claimant impugns the judgment and award dated 20/09/2017, passed by the Motor Accident Claims Tribunal, Parbhani, in Motor Accident Claims Petition [MACP] No.123/2015.

2. The appellant – claimant suffered injuries in an accident dated 11/05/2014. He was hospitalized at various hospitals and treated for the injuries during the period from 13/10/2014 to 02/07/2015. A discharge card regarding the treatment is placed on record. The claimant has further relied upon the disability certificate issued by Dr. Mohd. Faisal placed at Exhibit-35, which shows that the claimant had suffered 48% disablement. The Tribunal, after considering the aforesaid evidence, allowed the claim petition vide judgment and order dated 20/09/2017 and passed an award for Rs.4,53,200/-

3. Mr. Agrawal, learned Advocate appearing for the appellant / claimant submits that although the Tribunal has accepted that the appellant has suffered permanent disablement and loss of earning capacity, nothing is awarded by way of future prospects. He would further submit that the accident occurred in the year 2014 and even going by the minimum wages at the relevant time, the notional income of claimant ought to have been considered in the range of Rs.6000/- per month. However, the Tribunal has erroneously estimated notional income @ Rs.4500/- per month.

4. Mr. Bagal, learned Advocate appearing for respondent no.2 – insurance company would invite attention of this Court towards the disability certificate [Exhibit-35] to contend that in fact, there is duplication of the disability for same count. Further the treating Doctor is not examined. No case is made out to consider 40% permanent disability or commensurate loss of earning with addition towards future prospects.

5. Having considered the submissions advanced, it can be gathered that there is no dispute about the accident and injuries suffered by the claimant. Even it is not disputed that the claimant had suffered permanent disablement. The Tribunal has accepted 40% permanent disablement on the basis of evidence of PW-2 Dr. Mohd. Faisal who is qualified medical practitioner. The finding of tribunal on point of permanent disability and loss of earning capacity is not assailed by respondents by taking recourse to cross objection or appeal. The Tribunal assessed notional income @ Rs.4500/- per month. Apparently, the accident took place in the year 2014. If we consider the minimum wages for the agricultural worker or labour at the relevant time, the income of the claimant could have been safely assumed to the tune of Rs.5000/- per month.

6. It is trite that even in the case of permanent disablement, addition of compensation by way of future prospects can be considered. In the present case, although the Tribunal has considered 40% functional disability, nothing is added towards future prospects. It would be, therefore, necessary to modify the award of the Tribunal and add 40% in the income of the claimant by way of future prospects. The Tribunal has awarded Rs.50,000/- towards non-pecuniary heads. Looking to the nature of disability, no further addition is required on that count. Hence, the compensation can be re-assessed as under:

Sr. Nos.	Heads	Amount (Rs.)
1.	Monthly Salary of Rs.5000	Rs.60000/-

	[5000 x 12]	
2.	Addition of 40% towards future prospects [60000+24000]	Rs.84000/-
3.	Apply multiplier of 17 with 40% loss of earning 33600 x 17	**Rs.5,71,200/-**
3.	Add Rs.50000/- towards non-pecuniary heads	**Rs.50000/-**
4.	Add Rs.36000/- towards medical expenses	**Rs.36000/-**
	Total	**Rs.6,57,200/-**

7. In light of the above, the appeal deserves to be partly allowed. Hence, following order:

ORDER

(i) The appeal is partly allowed.

(ii) The award passed by the Tribunal is modified. The respondents shall jointly and severally pay compensation **Rs.6,57,200/- [Six Lakhs Fifty Seven Thousand Two Hundred Only]** to the claimant together with interest @7% pa from the date of petition inclusive of NFL.

(iii) The compensation amount paid/deposited as per the award of the Tribunal shall be appropriated.

(iv) On deposit of compensation amount as per modified award, it be disbursed to the claimant.

(v) The modified award be drawn, subject to deposit of deficit court fees, if any.

(vi) Appeal is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer