

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.3684 OF 2022**

Gangadhar Mallappa Bablad,
Age – 39 years, Occu. Mason, Now Nil,
R/o Kirti Nagar, Solapur, Dist. Solapur.

..Appellant
(Orig. Claimant)

Versus

1. Vikas Ambrushi Gangavane,
Age: Major, Occu. Agriculture,
R/o.: Waruda, Tq & Dist. Osmanabad,
(Owner of M/cycle No.MH-25-Y-0558)

2. The Branch Manager,
The Oriental Insurance Company Ltd.
Bhanu Nagar, Solapur-Aurangabad Road,
Behind Bank of Maharashtra, Osmanabad.
Policy No.161990/31/2020/420,
Validity: 2772019 to 26072020
(Insurer of M/cycle No.MH-25-Y-0558)

..Respondents
(Orig. Respondents)

...

Mr. P. S. Chavan, Advocate for the Appellant.
Mr. M. K. Goyanka, Advocate for Respondent No.2.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 26th JULY, 2023.

PRONOUNCED ON : 07th AUGUST, 2023.

JUDGMENT:-

1. The appellant/original claimant, aggrieved by the judgment and award dated 13.07.2022, passed by the Motor Accident Claims Tribunal, Osmanabad in MA.C.P. No.7 of 2020 approached this Court under Section 173 of the Motor Vehicle Act seeking enhancement of compensation. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The contention of the claimant is that that on 20.09.2019 while he was proceeding on motorcycle as pillion rider, the offending motorcycle bearing Registration No.MH-25-Y-0558 came from back side and dashed against the motorcycle on which he was riding. Resultantly, claimant fell down. He suffered injuries. He was hospitalized at Sai Mangal Hospital at Tuljapur during the period from 20.09.2019 to 29.11.2019. During his treatment, his right leg has been amputated above the knee. He spent total amount of Rs.5,50,000/- towards hospital expenses. The contention of the claimant is that he was aged about 37 years at the time of accident. He was professional Mason, earning Rs.500/- per day. On account of permanent disablement suffered, he is incapable of performing his job as before. With the aforesaid averments, he approached the Tribunal under Section 166 of the Motor Vehicle Act. The Tribunal after considering the evidence on record, partly allowed the claim and awarded compensation of Rs.13,85,600/- alongwith interest at the rate of 9% per annum from the date of petition.

3. Mr. Chavan, learned Advocate appearing for the claimant would criticize the award on the ground that the Tribunal considered 60% loss of earning commensurate to the permanent disablement, which according to him is incorrect. He would submit that the Tribunal did not consider future prospects. The compensation awarded under non-pecuniary heads is meager. Nothing is granted towards future medical treatment.

4. Per contra, Mr. Goyanka, learned Advocate appearing for the respondent-Insurance Company supports the award stating that the Tribunal awarded compensation as per settled principles of assessment of compensation, which do not require interference.

5. Having considered the submissions advanced, it can be gathered that there is no dispute that the claimant suffered amputation of right leg above knee. Although, there is no evidence regarding the actual occupation of the claimant prior to the date of accident, the notional income can be assessed on the basis of the minimum wages available to the labour. The Tribunal has rightly considered the notional income of the claimant at the rate of Rs.8000/- per month.

6. The claimant relied upon the evidence of PW2-Dr. Pawan Patil, who assessed the permanent disablement to the extent of 80% and issued certificate at Exhibit-31. It is true that the amputation of leg may not bring 100% disablement, however, in the matter of assessment of compensation, the Tribunal is required to determine loss of earning based on the occupation of the claimant at the time of accident. In this case, the claimant has pleaded that he was a Mason. Even it is considered that, he was labour on the construction work, it can be presumed that he cannot perform his job as before with amputation of right leg. Therefore in facts of this case, it would be desirable to consider 100% loss of earning capacity. The Tribunal has rightly relied upon the judgment of the Supreme Court of India in the matter of ***Rajkumar Vs. Ajay Kumar and Another***¹, wherein it has been observed that the same permanent disablement may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job and other factors. Keeping in mind these observations, there is no difficulty to hold that in the facts of the case the claimant has suffered total loss of earning capacity. Perusal of the award passed by the Tribunal would show that the loss of earning is considered to the extent of 60% only which needs to be corrected.

7. Now it is settled that even in the injury cases the addition of future prospects will have to be considered. The law on this point is well settled. Reference can be given to the judgment in the case of ***Jagdish Vs. Mohan***¹. In that view of the matter, considering the age of the claimant at the time of accident, 40% amount needs to be added by way of future prospects to his established income. Therefore, while considering the loss of earning capacity, the monthly loss to the claimant will have to be considered Rs.11,200/-. Further, the multiplier of '15' would be applicable to the age of the claimant. So far as the non-pecuniary loss suffered by the claimant, the Tribunal has awarded total amount of Rs.2,00,000/- only. In the case of ***R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd.***², Supreme Court of India considered various non-pecuniary losses that occurs to the injured. In that view of the matter, the claimant would be entitled for compensation towards future medical expenses, attendant charges, mental and physical shock, pains and sufferings, loss of amenities in life, loss of expectation of life, inconvenience, hardship, discomfort, disappointment and permanent disablement.

8. In view of the aforesaid observations, the compensation amount can be re-assessed in the tabular form as under : -

Sr. No.	Heads	Amount (Rs.)
1	Annual loss of earning with addition of 40% future prospects Rs.11,200 x 12 =	Rs.1,34,400/-
2	Future loss of earning after applying multiplier of '15' (Rs.1,34,400 x 15)	Rs.20,16,000/-
3	Permanent disablement	Rs.2,00,000/-
4	Medical Bills	Rs.3,79,200/-
5	Loss of amenities-expectation of life	Rs.1,00,000/-

¹ AIR 2018 SC 1347.

² 1995 (1) SCC 551.

6	Pain and sufferings	Rs.50,000/-
7	Special Diet and attendant charges	Rs.50,000/-
8	Future medical expenses and transportation	Rs.1,00,000/-
TOTAL		Rs.28,95,200/-

9. 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, the order:-

ORDER

- i. The Appeal is partly allowed.
- ii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.28,95,200/- (Rs. Twenty Eight Lakhs Ninty Five Thousand Two Hundred 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.

(S. G. CHAPALGAONKAR)
JUDGE