



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

**FIRST APPEAL NO. 3220 OF 2019**

Madansing Chatarsing Rajput  
Age : 31 years, Occu. : Labourer,  
R/o. Muthad, Tq. Bhokardan,  
Dist. Jalna.

.. Appellant  
(Orig. Claimant)

**Versus**

1. Shaikh Isamoddin s/o. Sk. Nizamoddin  
Age : 51 years, Occu. : Owner & Driver.  
R/o. : Muthad, Tq. Bhokardan  
Dist. Jalna.

2. The United India Insurance Company Ltd.  
Jalna, Through its Branch Manager

.. Respondents  
(Orig. Respondents)

Mr. V. D. Patnurkar, Advocate for the Appellant.  
Mr. S. R. Bagal, Advocate for Respondent No. 2.

**CORAM : KISHORE C. SANT, J.**

**Date on which reserved for order : 11<sup>th</sup> October, 2023.**

**Date on which order pronounced : 01<sup>st</sup> December, 2023.**

**ORDER :-**

. The present appeal is by original claimant seeking enhancement in the amount of compensation towards his injury claim against the respondents. Respondent No. 1 is the owner of the vehicle and respondent No. 2 is the Insurance Company.

2. The learned Member, M.A.C.T., Jalna by judgment and order dated 22.03.2018 had partly allowed the M.A.C.P No. 50/2012 directing respondents to pay jointly and severally an amount of Rs. 1,59,600/- to the claimant including NFL amount with interest at the rate of 7.5% per annum from the date of petition. The learned Member, M.A.C.T. considered disability only 15%.

3. The facts in short are that, on 21.02.2009 the claimant was travelling in rickshaw of respondent No. 1 bearing registration No. MH-21-BF-1813 at around 12.30 hours. The rickshaw was proceeding from Sillod to Bhokardan. The rickshaw was driven by respondent No. 1 himself. In an accident, the vehicle turned turtled on the road due to rash and negligent act of respondent No. 1. In the said accident the claimant received multiple injuries to his leg and head. He was therefore admitted in the hospital. Because of the said injuries he suffered permanent disability and lost his earning capacity. The disability is to the extent of 21%. In support of his case he produced on record the copy of FIR, copy of spot panchanama, registration certificate showing the particulars of the rickshaw and copy of insurance certificate. He produced the medical certificate to show that he received injuries and became permanently disabled to the extent of 21%. The doctor who was examined proved the disability certificate.

He also deposed that Rs. 25,000/- was required for the treatment.

4. It is the case of the claimant that his monthly income was Rs. 4,000/- to Rs. 5,000/- per month. Because of the accident he lost the capacity to earn. Considering his age to be 30 years at the time of accident the multiplier of 18 needs to be applied and prayed for compensation of Rs. 2,61,440/-.

5. The respondent No. 2 opposed the said petition.

6. As there is no challenge by the respondents this Court need not go to the evidence about the liability to pay the compensation and other factual aspects. This Court is thus confined only to point as to whether the learned Tribunal has rightly considered the disability as 15% and consequential loss of earning capacity.

7. The learned Tribunal has recorded that, since the claimant could not prove the nature of his work, it is taken that the claimant can perform any sitting work and is not absolutely disabled. Though the disability is to the extent of 21%, it is taken only to the extent of 15%. The learned Tribunal has also discussed that there is no clear evidence about the actual income and therefore, the income is taken only as Rs. 4,500/- per month. Thus, the learned Tribunal considered the annual income of the claimant as Rs. 54,000/- per annum. Loss of

earning is taken to be Rs. 15% i.e. Rs. 8,100/-. By applying multiplier of 16 the learned Tribunal has granted Rs. 1,29,600/-. Under the pain and suffering and under consolidated head of conveyance, attendant and special food is also taken to be Rs. 15,000/- each and thus, has granted total compensation of Rs. 1,59,600/-.

8. Learned advocate Mr. Patnurkar for the appellant vehemently argued that the learned Member, M.A.C.T. has failed to appreciate the facts of the case. The learned Tribunal ought to have taken the income to be Rs. 6,000/- per month i.e. Rs. 72,000/- per annum. The age of the claimant is taken to be 33 years when in fact as per his Adhar Card his date of birth is 05.12.1979 i.e. 30 years as the accident took place on 21.02.2009. The learned Tribunal has also not considered future prospects at the rate of 50%.

9. In support of his submissions learned advocate for the appellant relied upon the judgment in the case of **Mr. Shaikh Farooq Mohammad Gaouse Vs. The Transport manager** in First Appeal No. 169/2009 passed by this Court at Principal Seat at Bombay. In that case, this Court had granted Rs. 5,00,000/- towards pain and suffering, Rs. 10,36,000/- towards future medical expenses, Rs. 5,76,000/- towards attendants expenses and Rs. 2,88,000/- towards special diet.

10. Learned advocate further relied upon the judgment in the case of **Savitha Vs. M/s. Chodamandalam M.S. General Insurance Co. Ltd. and others** in Civil Appeal No. 2611/2020 by the Hon'ble Apex Court where the disability was assessed at 32% as opined by PW-4 in that case and the amount of compensation was enhanced.

11. He further relied upon the judgment in the case of **Jagdish Vs. Mohan and Ors.** in Civil Appeal No. 2217/2018. In the said case, the Hon'ble Apex Court had taken the notional income of the injured as Rs. 6,000/- per month. In that case the appellant was a carpenter. The claimant had claimed that he was receiving income of Rs. 6,000/- per month. The learned Tribunal had considered the monthly income to be Rs. 4,000/-. The learned Tribunal had applied the multiplier of 18. Future prospects were also considered. The Hon'ble Apex Court in that case in paragraph Nos. 8, 9 and 10 has observed as under :

“8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (I) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together

with its amenities;

(iv) Medical expenses including those that the victim may be required to undertake in future; and

(v) Loss of expectation of life.

In *Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd*<sup>2</sup>, this Court held:

“The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim’s inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.” In *K Suresh v New India Assurance Company Ltd*<sup>3</sup>, this Court adverted to the earlier judgments in *Ramesh Chandra v Randhir Singh*<sup>4</sup> and *B Kothandapani v Tamil Nadu State Transport Corporation Limited*<sup>5</sup>. The Court held that compensation can be granted for disability as well as for loss of future earnings for the first head relates to the impairment of a person’s capacity while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

In *Govind Yadav v New India Insurance Company Limited*<sup>6</sup>, this Court adverted to the earlier decisions in *R D Hattangadi v Pest Control (India) (Pvt) Ltd.*<sup>7</sup>, *Nizam’s Institute of Medical Sciences v Prasanth S Dhananka*<sup>8</sup>,

Reshma Kumari v Madam Mohan<sup>9</sup>, Arvind Kumar Mishra v New India Assurance Company Limited<sup>10</sup>, and Raj Kumar v Ajay Kumar<sup>11</sup> and held thus:

“18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.” (Id at page 693) These principles were reiterated in a judgment of this Court in Subulaxmi v MD Tamil Nadu State Transport Corporation<sup>12</sup> delivered by one of us, Justice Dipak Misra (as the learned Chief Justice then was).

9. Having regard to these principles, it would be now appropriate to assess the case of the appellant for enhancement of compensation. The accident took place on 24 November 2011. The appellant was a skilled carpenter and self-employed. The claim of the appellant that his earnings were Rs. 6,000/-per month cannot be discarded. This claim cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the

accident.

10. In the judgment of the Constitution Bench in *Pranay Sethi (supra)*, this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs. 2400/- towards loss of future prospects.”

12. He further relied upon the judgment in the case of **Sandeep Khanuja Vs. Atul Dande & Anr.** in Civil Appeal No. 1329/2017. In that case the claimant was a Chartered Accountant and sustained fractured injuries to both the legs. It was case of the claimant before the Hon’ble Apex Court that the multiplier ought to have been applied as per the provisions of the Act. Considering the disability to the extent of 70% it was argued by the opponents that the injury showing 70% permanent disability had no adverse effect on the working of the appellant as he was a Chartered Accountant and therefore, no multiplier was applicable. The Hon’ble Apex Court held that, now it is well settled that in awarding compensation by applying multiplier is logical sound and legally well established practice. It is held that the disability refers to any restriction or lack of ability to perform an activity in the manner

considered normal for a human being. The Hon'ble Apex Court thus held that the multiplier is applicable and has increased amount of compensation in proportion to the disability.

13. Learned advocate for respondent No. 2 vehemently opposed the appeal justifying the impugned judgment passed by the learned Member, M.A.C.T. He submits that the learned Tribunal has rightly considered the extent of disability. He further submits that the notional income taken by the learned Tribunal is also taken on the higher side. In any case the income cannot be taken to be moved than what is considered by the learned Tribunal. He thus prays for dismissal of the appeal.

14. Considering all the above aspects, this Court finds that, the amount of income needs no consideration. Admittedly there is no evidence about the income. Though it is claimed to be Rs. 6,000/- per month it is not substantiated by any of the parties. The finding of the learned Tribunal taking the income as Rs. 4,500/- per month is just and reasonable. No case is made out to disturb that finding. This Court considered that when disability was shown to be 21% there was no reason to consider that the earning capacity is reduced only by 15%. It ought to have been taken as 21%. The learned Tribunal has further

failed to add 50% towards future prospects as the claimant happens to be a labourer. Even the multiplier ought to have been considered as 18. The learned Tribunal has wrongly taken the age as 33 years when on the basis of Adhar Card it shows that his age was 30 years. Thus, this Court calculates the compensation as below :

15. Rs. 54,000/- income per annum + Rs. 27,000/- i.e. 50% towards future prospects = Rs. 81,000/-. Loss of future earning at the rate of 21% per annum i.e. Rs. 17,010/-. By applying multiplier of 18 it is calculated as Rs. 3,06,180/-. Further, this Court finds that, towards pain and suffering the proper amount would be Rs. 50,000/-. Under the consolidated head of conveyance, attendant and special food also this Court finds that it would be proper to award Rs. 50,000/-. Thus, the total amount the claimant would be entitled to Rs. 4,06,180/-. Thus, the claimant would be entitled to Rs. 4,06,180/- minus Rs. 1,59,600/- = 2,46,580/-.

16. Thus, this Court holds that the appellant would be entitled to receive the amount of difference of Rs. 2,46,580/- (Rs. Two Lakh Forty Six Thousand Five Hundred Eighty only) to be paid within a period of two (02) months from today along with interest @ 7.5% from the date of filing of claim petition.

17. The appeal is allowed in above terms and is disposed off.

**( KISHORE C. SANT, J. )**

P.S.B.