

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.4169 OF 2016**

Narayan S/o Ananda Sonawane,
Age: 45 years, Occu: Agriculture (Nil @ present),
R/o. Tapowan, Tq. Kannad, Dist. Aurangabad.

..Appellant
(Orig. Claimant)

Versus

1. Asif Khan S/o Abdul Khan,
Age: Major, Occu.: Owner and Driver
of Matador No.MH-12-AU-7734,
R/o. Kunjkheda, Tq. Kannad, Dist. Aurangabad.

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
Divisional Office, Adalat Road,
Aurangabad.

..Respondents
(Orig. Respondents)

...

Mr. A. P. Khedkar, Advocate for the Appellant.
Mr. S. R. Bodade, 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 impugns the judgment and award dated 22.07.2016 passed by the Motor Accident Claims Tribunal, Aurangabad in MA.C.P. No.23 of 2012 by filing present appeal under Section 173 of the Motor Vehicle Act and seeks enhancement of compensation. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The claimant was injured in an accident dated 06.10.2011 while he was traveling in the offending Matador bearing Registration

No.MH-12-AU-7734. He undertook that journey for transporting his ginger to Surat market. The accident took place when the Tempo dashed against the parked Truck bearing Registration No.MH-18-M-7011. The offence was registered against the Tempo driver vide Crime No.113/2011 with Police Station Mehunbare. The claimant suffered injury in the said accident, therefore, raised claim seeking compensation against the owner and insurer of the Tempo under Section 166 of the Motor Vehicle Act, thereby claiming compensation of Rs.3,00,000/-. The claimant contends that he is agriculturist and possesses milking cattle. However, on account of injuries suffered in the accident, he sustained permanent disablement causing loss of earning capacity. The claim was contested on behalf of respondent no.2-insurer by filing written statement. The statutory defence that the driver was not having valid authorization and that the vehicle was used in contravention of permit has been raised. The Tribunal framed issues and recorded evidence of the parties. The claimant relied upon own evidence as well as oral evidence of CW-2-Waman and Dr. Parmeshwar Jaiswal in support of his case. No evidence is adduced on behalf of the respondent-Insurance Company. The Tribunal partly allowed the claim and directed respondent nos.1 and 2 to jointly and severally pay compensation of Rs.1,64,617/- to the claimant alongwith interest at the rate of 9% per annum from the date of petition. The claimant impugns the aforesaid judgment mainly to assail assessment of compensation. The respondent-insurer accepted the award as passed by the Tribunal.

3. Mr. Khedkar, learned Advocate appearing for the claimant in his endeavor to assail the award submits that the Tribunal has erroneously restricted notional income @ Rs.3000/- per month, although the claimant has raised contention that he was earning Rs.15,000/- per month. He would submit that the Tribunal did not award anything to-

wards future prospects. The paltry sum has been awarded towards non-pecuniary heads, although the claimant has suffered permanent disablement. Therefore, he seeks re-assessment of the compensation.

4. Mr. Bodade, learned Advocate appearing for respondent no.2-Insurance Company submits that in fact the claimant could not prove his income from either of the sources. The Tribunal assessed higher compensation. He would submit that the evidence of Dr. Jaiswal on the point of permanent disablement is liable to be discarded since the claimant failed to bring disability certificate of the treating Doctor. He would further submit that the Insurance Company had raised defence of permit before the Tribunal, however, the same is not considered and award is passed against the insurer.

5. Having considered the submissions advanced, it is apparent that the respondent-insurer has satisfied the award as passed by the Tribunal. Even the insurer has not filed Cross Objections in this appeal to assail any findings recorded by the Tribunal. In that view of the matter, only the challenge raised on behalf of the claimant to the assessment of the compensation can be taken into consideration in the present appeal. If the insurer was aggrieved by the rejection of its defence on the point of permit, it was open for the insurer to challenge the finding on that point. However, no steps are taken in this regard. Therefore, the submission on this count would not germane to this appeal.

6. Mr. Khedkar, learned Advocate appearing for the claimant submits that the claimant has produced the evidence regarding his agriculture land holding in Gut No.84 admeasuring 69 R. The claimant was cultivating his own land as well as lands of his family members. He would submit that the claimant was maintaining milking cattle and supplying milk to the society. The evidence of CW-2 Waman supports

such contention. He would, therefore, urge that the Tribunal could have considered reasonable income of the claimant instead of making notional assessment of Rs.3000/- per month. He would further submit that nothing has been granted towards future prospects and non-pecuniary heads.

7. Mr. Bodade, learned Advocate appearing for the respondent-Insurance Company opposes the contention and justifies the assessment made by the Tribunal.

8. Having considered the submissions advanced and after going through the record and proceedings, it is revealed that the claimant has placed on record evidence regarding his agriculture holding. Further it has been brought on record that he was possessing milking cattle. In that view of the matter, there was no difficulty in considering his income in the range of Rs.4500/- per month. Similarly, considering the age of the claimant, addition of 25% amount towards future prospects can be made. The claimant has suffered 25% permanent disablement as per evidence of Dr. Jaiswal, who is qualified Orthopedician. He assessed permanent disablement by McBride scale. He deposed that there is restriction in the movement of left knee and shortening of the left leg by one and half centimeter. The discharge card from Shreekrishna Hospital shows that the claimant had suffered the fracture neck of the fibula left side, which was operated for two compression cancellous screw at condyle of tibia. If nature of injuries is considered, there is no reason to discard the contention of the claimant that he is permanently disabled as well as suffered loss of earning capacity commensurate to the permanent disablement. In that view of the matter, it would be appropriate to consider 25% loss of earning to the claimant. So far as non-pecuniary losses are concerned, the claimant is entitled for the compen-

sation under various heads. The permanent disablement itself is recognized as one of the independent head for compensation under the law. The Tribunal has rightly considered the addition of medical expenses of Rs.29,617/- relying upon the medial bills placed on record.

9. 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 income of the claimant (Rs.4500/-) with addition of 25% future prospects $\text{Rs.}5625 \times 12 =$	Rs.67,500/-
	Loss of earning per annum due to permanent disablement of 25% = $67500 \times 25/100 =$ Rs.16,875/-	Rs.16,875/-
2	Future loss of earning after applying multiplier of '15' (Rs.16875 x 15)	Rs.2,53,125/-
3	Permanent disablement	Rs.25,000/-
4	Medical Bills	Rs.29,617/-
5	Loss of amenities-expectation of life	Rs.10,000/-
6	Pain and sufferings	Rs.10,000/-
7	Special Diet and attendant charges	Rs.10,000/-
8	Future medical expenses and transportation	Rs.15,000/-
TOTAL		Rs.3,52,742/-

10. 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.3,52,742/- (Rs. Thirteen Lakh Sixty Five Thousand Two

Hundred Forty Two only) to the claimant inclusive of amount of 'NFL' along with the interest @ 7% 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

Devendra/August-2023