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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO.472 OF 2018**

Prakash s/o Gyanchand Kothari,  
aged about 64 years, occupation business,  
r/o bagla square, babupeth, Chandrapur,  
district Chandrapur. .... **Appellant.**

**:: V E R S U S ::**

1. Shri Vatte Singa Maiji,  
aged about major, occupation business,  
r/o Bamni, tahsil Ballarpur,  
district Chandrapur.

2. Shri Chandu s/o Degadu Weladi,  
aged about 36 years, occupation driver,  
R/o Muttuapur, tahsil Aheri,  
district Gadchiroli.

3. National Assurance Company Ltd.,  
insurer of truck No.MH-34-M-2001,  
Chandrapur branch,  
opposite zilla parishad, Chandrapur. .... **Respondents.**

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Shri Madhur Deo, Advocate h/f Shri Rohit Joshi, Counsel for the  
Appellant.

None for the Respondents.

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**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED On : 2/02/2023**

**PRONOUNCED ON : 21/04/2023**

**JUDGMENT**

1. By this appeal, the appellant (claimant) challenges  
judgment and award dated 3.3.2017 passed by learned Member of

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the Motor Accident Claims Tribunal at Chandrapur in MACP No.134/2010 for enhancement of compensation.

2. Brief facts necessary for disposal of the appeal are as under:

On 7.5.2007, the claimant was proceeding to Repalliwala (A.P.), Chandrapur by his own car bearing registration No.MH-34-V-3. When the said car reached near Gurunanak College, Ballapur, Rajura-Chandrapur, at the relevant time, truck bearing registration No.MH-34-M-2001 came from the opposite direction and dashed against his car. Due to the said dash, the claimant sustained grievous injuries which resulted into permanent disablement at 40% of right hand. As per the contentions of the claimant, the offending vehicle truck was owned by respondent No.1 driven by respondent No.2 and validly insured with respondent No.3 (insurance company). Due to the accidental injuries, which resulted into permanent disablement, the claimant is unable to work and his working capacity was affected. At the relevant time, he was running his business and was earning Rs.1,08,700/- per annum through his business of tiles and ware house. Due to the accidental injuries, his working capacity is affected which resulted into loss in

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business and, therefore, he claimed the compensation by applying the multiplier method. He further claimed that learned Member of the tribunal had not taken into consideration the future loss of the claimant and awarded inadequate compensation and, therefore, he was constrained to file present appeal for enhancement of compensation.

3. Heard Advocate Shri Madhur Deo h/f learned counsel Shri Rohit Joshi for the claimant. In spite sufficient opportunity was granted, none appeared for the respondents.

4. Learned counsel for the claimant submitted that the claimant is aged about 64 years. His monthly income was Rs.14,000/- per month from the business of tiles and ware house and yearly income was Rs.1,68,000/-. He sustained 40% permanent disability due to the injuries to his right hand. Considering his age, 10% future prospects are to be taken into consideration. The claimant is also entitled to receive the compensation under the head of pain and sufferings. In support of his contentions, learned counsel for the claimant placed reliance on the decisions of the Honourable Apex Court in the cases of Sanjay Kumar vs. Ashok Kumar and another reported in (2014)5 SCC 330

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and Raj Kumar vs. Ajay Kumar and another, reported in (2011)1 SCC 343.

5. I have perused the record with the able assistance of learned counsel for the claimant.

6. As the present appeal is filed only for enhancement of compensation, the quantum of compensation awarded by learned Member of the tribunal is under challenge.

7. Admittedly, as neither the insurance company nor the owner of the offending vehicle truck has challenged the award passed by learned Member of the tribunal, the aspect of negligence is not required to be looked into.

8. Now, only question arises is, whether the claimant is entitled to receive enhanced amount of compensation.

9. The claimant, in order to prove the disability sustained, has adduced his evidence. As per his evidence, after the accident, he was admitted in Sushrut Hospital at Nagpur and undergone surgery and incurred expenses of Rs.3,50,300/-. He further deposed that due to the accidental injuries, he sustained 40% of permanent

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disability. In order to prove the disability, the claimant has examined Dr.Mrs.Sarita Hajare, who was serving as Medical Officer with the General Hospital at Chandrapur. As per her evidence, on 2.7.2009, the claimant was examined by Dr.Anjankar and on examination, he assessed the disability to the extent of 40%. However, the disability certificate does not show that the said disability resulted into functional disability. As per the evidence of the claimant, he was the owner of three factories and was paying income tax. Exhibit-53 is the acknowledgment of the income return. The claimant deposed that after the accident, his income is reduced and he sustained the loss. However, he has not produced on record any income tax return after the accident. As per the evidence, he had sustained Compound Grade III C segmental comminuted fracture, both bones, fore arm right side with neuro vascular compromise with multiple abrasions. The claimant claimed that he has incurred the expenses of Rs.3,50,000/- towards his medical treatment and produced the medical bills which are taken into consideration by learned Member of the tribunal and awarded the said amount as expenses towards the medical treatment. Learned Member of the tribunal has awarded the compensation of Rs.1,50,000/- considering the nature of injuries sustained by him.

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10. The claimant has claimed that as he has sustained the disability, which is permanent in nature, due to which his future prospects are affected, he is entitled to receive the compensation towards the future prospects.

11. It is well settled that a man is not compensated for physical injury, he is compensated for the loss which he suffers as a result of that injury. His loss is not in having the stiff parts of the body, it is his inability to live a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned. In calculating the compensation, the object is to award an amount which will put the injured person in the same position had he not sustained the injuries. It is true that money cannot be renewed the physical frame which has been damaged, but the endeavour in awarding the compensation should be the just and reasonable compensation.

12. By applying the aforesaid principle, in the present case, the evidence on record shows that the claimant has sustained the injuries which resulted into permanent disablement. Admittedly, there is no evidence that the said permanent disability converted

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into the functional disability. While awarding the compensation, the principles, which are to be taken into consideration, are guided by the Honourable Apex Court in the case of Raj Kumar vs. Ajay Kumar and another cited *supra* wherein it has been held that the tribunal has to first decide whether there is any permanent disability and the extent of such permanent disability. The tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, and (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

It is further held by the Honourable Apex Court that ascertainment of the effect of the permanent disability on the actual

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earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued

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as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

13. Thus, it is settled that the tribunal has to consider whether the permanent disability results into functional disability. It is well established law that permanent disability of a person need not result in loss of earning capacity and even when it results in loss of earning capacity, it need not be in the same percentage.

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14. In the present case, though the claimant has submitted that he has sustained the permanent disability, he has not adduced the evidence through the medical officer that the said permanent disability resulted into functional disability.

15. It is well settled that in order to determine the extent of loss of earning capacity, what is more important is the functional disability arising from the permanent disability. Functional disability which is the disability to earn, need not be same as permanent disability. A person may have 100% permanent disability, yet it may not result in complete loss of earning capacity. That is why, the claimant is required to prove not only the extent of his permanent disability but also the functional disability so that proper assessment of earning capacity lost by the claimant on account of injuries suffered in the accident can be made. Sometimes, injured persons lose their body parts due to amputation. However, considering their nature of work, it has not resulted in loss of earning capacity. When claimant is doing some service, job or business and because of loss of limbs of the body permanently, a claimant is not removed from service or he may not sustain loss in business as he can run business by appointing somebody in a

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managerial capacity. Therefore, in order to claim compensation, the law requires that claimant must adduce specific evidence and show how the disability suffered by him has affected his present and may be even future earning capacity.

16. In the instant case, admittedly, the claimant has not lost any body part permanently. As per the medical evidence, he sustained 40% permanent disablement. However, there is no evidence to show that the said permanent disablement resulted into functional disability. There is absolutely no evidence that due to the said disability, his business was affected and, therefore, he is entitled to receive the compensation by considering future prospects.

17. It is pertinent to note that as per the evidence of the claimant, he was running the business. Admittedly, the business will remain with him and he can supervise the business. At the most, his loss is in the managerial capacity. In fact, there is no evidence that he had sustained the functional disability which resulted into loss of earning capacity. Moreover, there is also no evidence indicating that expenses would be required for his future medical treatment.

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18. In view of the above, in my view, the claimant is not entitled to receive the compensation by considering loss of future prospects.

19. Admittedly, at the time of the accident, he was 64 years old. He had sustained the injuries like Compound Grade III C segmental comminuted fracture, both bones, fore arm right side with neuro vascular compromise with multiple abrasions. It is to be taken into consideration that in an advanced age, it is difficult that injuries would heal immediately. It takes long time to heal the injuries like fracture. Considering the same, admittedly, he had undergone severe pain and sufferings. Learned Member of the tribunal had not considered this aspect and not awarded the compensation under the head of pain and sufferings.

20. Considering the nature of the injuries the claimant sustained, amount Rs.1.00 lac would be just and proper under the head of pain and sufferings. The claimant is also entitled to receive compensation under the head of transport expenses, special diet, and attendant and for the same amount of Rs.25,000/- would be just and reasonable.

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21. In the light of the above discussion, the contentions raised by the claimant that he is entitled to receive the compensation towards the future prospects is not acceptable. However, he is entitled to receive an additional compensation of Rs.1,25,000/- towards pain and sufferings under the head of transport expenses, special diet and attendant. Hence, this Court passes following order:

**ORDER**

(1) The First Appeal is **partly allowed**.

(2) The respondent Nos.1 to 3 are directed to pay jointly severally an additional amount of compensation of Rs.1,25,000/- with interest at the rate of 7.5% from the date of filing of the claim petition.

With this, the First Appeal stands disposed of. No costs.

**(URMILA JOSHI-PHALKE, J.)**

!! BrWankhede !!

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