



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 3572 OF 2019

Pravin s/o Bapu Choudhari

.... APPELLANT  
(Ori. Claimant)

VERSUS

1. Ayub Hussain Attar Shaikh
2. The Divisional Manager  
United India Insurance Co.Ltd.,

... RESPONDENTS  
(Ori. Respondents)

Mr. S. B. Choudhari, Advocate for the appellant  
Mr. Rameshwar F. Totala, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.  
DATE : 24<sup>th</sup> JANUARY, 2024

P.C. :-

1. This appeal is preferred by the claimants seeking enhancement of the compensation granted by the Tribunal in MACP No. 359 of 2017 by judgment and award dated 8<sup>th</sup> January, 2019.
2. Parties are referred to as claimant, owner and insurer for the sake of convenience.
3. Except for claimant no one has challenged the impugned judgment and award. Thus, findings recorded by the Tribunal with regard to the occurrence of the accident due to the negligence of the driver of

offending vehicle, causing of injuries to the claimant and sustainment of permanent disability to the claimant have attained finality.

4. Learned counsel for the claimant submits that the Tribunal has committed error in considering the notional income of the claimant at the rate of Rs.6,000/- per month. It is his contention that the claimant was a welder for doing fabrication work and also was an agriculturist. It is his submission that on the basis of the occupation of the claimant the income of the claimant ought to have been considered @ Rs.10,000/- per month. In order to support his submission he placed reliance on the judgment of the Hon'ble Apex Court in case of ***Parminder Singh Vs. New India Assurance Company Ltd. & Ors., 2019 All SCR 1775***. By relying on this judgment it is his further submission that the future prospects ought to have been considered and added while determining loss of earning capacity by the Tribunal. Thus, according to him the impugned judgment and award deserves modification.

5. Learned counsel for the insurer opposed the said contention by drawing attention of this Court to the findings recorded by the Tribunal. It is his submission that having regard to the nature of occupation of the claimant his income is rightly considered at the rate of Rs.6,000./-. He further opposes awarding compensation for loss of future prospects.

6. Claimant in his oral evidence claimed about he earning Rs. 10,000/- per month by fabrication work and Rs. 2 lakhs per annum from agricultural land. However, except for his bare statement there is absolutely no evidence placed on record to substantiate the same. Since, initial burden to prove income is on claimant, it was essential for him to place on record evidence indicating that he used to do fabrication work so also was involved in agricultural activities. He, however, has not led any evidence in this regard. In spite of this fact, in view of settled law with regard to determination of income even in absence of actual proof by way of notional income, learned Tribunal after having considered the vocation of claimant and instead of accepting notional income at Rs.4,000/- which is applicable to a labourer, it was accepted at Rs.6,000/- per month. The Tribunal therefore has recorded reason for doing so. In the facts and circumstances of the case and since claimant has failed to place on record any other evidence in order to show that the said findings are perverse.

7. As regards the permanent disability assessed by the expert to the extent of 70% there is no dispute made by the claimant though it is now claimed that owing to the injury sustained by him he has lost total earning capacity. Having regard to the nature of injuries caused to the claimant with amputation of one leg, permanent disability assessed by

Medical Expert to the extent of 70% is correct requiring no interference. Consequently, the loss of income on account of permanent disability would be to the extent 70% of the income of the claimant.

8. Learned Tribunal however has not considered the future prospects while determining the amount of compensation. The Hon'ble Apex Court in case of *Mohd. Sabeer Alias Shabir Hussain Vs. Regional Manager, U.P. State Road Transport Corporation, AIR 2023 SC 186* has held "It is well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place." In the said case the Hon'ble Apex Court in the light of *National Insurance Company Limited Versus Pranay Sethi and Others, (2017) 16 SCC 680* granted 40% additional future prospects as compensation to appellant therein. Applying the said ratio the present appellant also is entitled for 40% additional for future prospects. Hence the following order.

#### **ORDER**

- (i) First Appeal is partly allowed.
- (ii) The judgment and decree dated 08/01/2019 passed by

the First Appellate Court in MACP No. 359/2017 is modified by adding 40% towards future prospects as under:

| Sr. No. | Heads                                                                             | Rs.                |
|---------|-----------------------------------------------------------------------------------|--------------------|
| 1.      | Annual Income<br>Rs.72000/- + 40% = Rs. 1,00,800/-<br>Rs.100800/- x 18 multiplier | 18,14,400/-        |
| 2.      | Minus 30% towards disability                                                      | (-)5,44,320/-      |
| 3.      | Medical Expenses                                                                  | 1,12,435/-         |
| 4.      | Towards pain, shock agony etc.                                                    | 30,000/-           |
| 5.      | Lump sum                                                                          | 20,000/-           |
|         | <b>Total compensation</b>                                                         | <b>14,32,515/-</b> |

- (iii) Rest of the judgment and award to remain unchanged.
- (iv) Claimants to pay Court fees on enhanced compensation as per rules.
- (v) Amount deposited (along with accrued interest) by respondents is permitted to be withdrawn by claimants.
- (vi) The difference of compensation be deposited within a period of six weeks.
- (vii) No order as to costs.

**(R. M. JOSHI, J.)**

ssp