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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2043 OF 2018

Prabhakar Shamrao Kolte
Age - 35 years, Occ - Labour, At Present Nil
R/o Kumbhephal,
Taluka & District - Aurangabad
Chetna Nagar, Harsool,
District - Aurangabad

APPELLANT

VERSUS

1. Divisional Controller,
Maharashtra Road Transport Corporation
Opposite Employment Office,
Aurangabad, District - Aurangabad

RESPONDENTS

2. Vishnu Eknath Susar

DELETED

.....
Mr. Mohit R. Deshmukh, Advocate for the appellant
Mr. Anand D. Wange, Advocate for respondent No.1
Respondent No.1 deleted
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 11th JULY, 2024
PRONOUNCED ON : 24th JULY, 2024

JUDGMENT :

1. By this appeal, filed under section 173 of the Motor Vehicles Act, original claimant seeks enhancement of compensation awarded by Motor Accident Claims Tribunal, Aurangabad in MACP No. 252 of 2017.

2. Claimant filed the claim petition contending that on 26th December, 2016, at about 8.00 p.m. he was going towards his house at Harsool, on Motorcycle bearing No. MJL 8365 with his friend Sunil More on Phulambri - Aurangabad road. When he reached near gate of Stepping Stone School, respondent No.2 - Driver of State Transport Bus who was driving ST Bus bearing No. MH-14/BT4006, gave dash to him. In the accident, claimant suffered grievous injuries to his right hand and leg. He was admitted in Government Hospital, Aurangabad and thereafter in MGM Hospital, as indoor patient from 17th January, 2017 to 1st February, 2017 and from 15th February, 2017 to 16th February, 2017. Claimant was 34 years old at the time of accident and was a mason by profession and he was earning Rs.10,000/- per month. Due to the accident, he was not in a position to do masonry work. He, therefore, claimed Rs.12 lakh compensation.

3. Respondent No. 1- Maharashtra State Road Transport Corporation and respondent No.2 - Driver, filed their written statements and opposed the claim. They claimed that driver of the State Transport Bus is well trained and he is not responsible for the accident.

4. The Tribunal, after recording evidence and hearing the parties, awarded compensation of Rs.8 lakh to claimant, along

with 9% interest p.a. The claimant is aggrieved by the quantum of compensation.

5. Heard learned advocate for claimant, learned advocate for MSRTC, perused the record and written notes of arguments filed by the claimant along with citations.

6. Learned advocate for claimant has assailed the quantum of compensation awarded by the Tribunal by relying on following judgments :

- I. "Syed Sadiq and Others V/s Divisional Manager, United India Insurance Company Ltd" (2014) 2 SCC 735
- ii. "Sarnam Singh V/s Shriram General Insurance Company Limited and Others" (2023) 8 SCC 193
- iii. "Mohd. Sabeer Alias Shabir Hussain V/s Regional Manager, UP State Road Transport Corporatin" 2022 SCC OnLine SC 1701
- iv. "Parminder Singh V/s New India Assurance Company Limited and Others" (2019) 7 SCC 217

7. Learned advocate for respondent No.1 supported the impugned judgment and award.

8. The accident is not disputed by respondents. FIR lodged against Driver of ST Bus is placed on record. Claimant has

examined himself in support of the claim. Perusal of cross-examination of claimant shows that nothing is elucidated from him, which is detrimental to his claim. Only a suggestion was given to him that he was not getting income of Rs.10,000/- per month. There is not even a suggestion that he was not doing masonry work. In view of the evidence of the claimant, it can safely be held that, at the time of accident, claimant was doing masonry work. The Tribunal has erroneously observed that claimant has failed to file cogent evidence to show that he was mason by profession and was earning Rs.10,000/- per month. The Tribunal has proceeded to assess notional income of claimant at Rs.4,500/- per month, without assigning cogent reasons. Considering the date of accident in the year 2016 and the place of residence of claimant in city like Aurangabad, notional income of claimant ought to have been considered at Rs.6,500/- per month.

9. Medical documents, in the form of discharge cards (Exhibits-26 and 27), medical Bills (Exhibit-29) and disability certificate (Exhibit-33) issued by Government Hospital are admitted by the MSRTC. Leg of claimant is amputated above knee, therefore, disability certificate certifying 85% permanent disability is issued by the Government Hospital. For the treatment, the claimant has incurred expenditure of Rs.46,173/-

The Tribunal has accepted that the claimant was 34 years old at the time of accident and hence, applied multiplier of 16, however, failed to grant compensation under the head future prospects. Considering the fact that claimant's leg is amputated, and that he has suffered 85% permanent disability, the loss of working capacity needs to be assessed, keeping in mind these aspects. The claimant, being mason, and the said work requires continuous movement of legs, therefore, amputation of one leg has seriously affected work of claimant. Hence, the Tribunal ought to have awarded adequate compensation for loss of work and earning capacity and also ought to have awarded compensation for fixation of artificial limb and its maintenance.

10. In **“Mohd. Sabeer alias Shabir Hussain”** (*supra*), the Apex Court has held :

“13. The appellant has suffered an amputation of the lower right limb, a fracture in the medial wall of the bilateral orbit, crush injury right leg, fracture tibia right leg, exposed vessels and other injuries. As per the disability certificate, the Appellant has suffered 70% disability, however the High Court has held that the Appellant has only suffered 35% loss in future earnings due to the disability.

14. To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the Appellant, as held by this Court in the case of Sandeep Khanuja V. Atun Dande (2017) 3 SCC 351. The relevant paragraph of the judgment is quoted

hereunder:-

“The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 75% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large extent and that too at a young age.”

11. In **“Sayed Sadiq and Others”** (*supra*), a vegetable vendor of 24 years lost his left upper arm and right leg in an accident. In these facts, his functional disability was estimated at 85% for determining loss of income. It is also held that vegetables vendor cannot be expected to produce documents to prove his monthly income. Considering the present state of economy and rising prices in agricultural products, vegetable vendor was held capable of earning Rs.6,500/- per month. Since he was 24 years of age and had suffered 85% functional disability, he was entitled for 50% increment in future prospects.

12. In **“Parminder Singh”** (*supra*), the Apex Court summarized the principles of determining compensation on the basis of functional disability.

13. In the light of aforesaid ratio, and considering the facts of the present case, claimant is entitled for following compensation.

Sr. No.	Particulars	Total in Rs.
1	Annual income of claimant (6500 + 40% future prospects X 12) = 9100 X 12	1,09,200
2	Annual income Rs.109,200/- - 85% disability = 92820	92820
3	Pecuniary loss of 85% functional disability = (annual income X multiplier of 16) = 92820 X 16 =	1485120
4	Compensation towards Pain and sufferings	1,00,000
5	Loss of amenities	1,00,000/-
6	Loss of disability and disfigurement	1,00,000/-
7	Compensation for fixation of artificial limb and its maintenance	5,00,000/-
8	Total compensation	22,85,120
9	- Compensation granted by Tribunal	8,00,000
10	Enhanced compensation =	14,85,120

14. Hence, the following order:

ORDER

- A. First Appeal is partly allowed with proportionate costs.
- B. Impugned order dated 27th February, 2018 passed by learned Member, Motor Accident Claims Tribunal,

Aurangabad in MACP No. 252 of 2017 is modified and compensation of Rs.22,85,120/- is awarded. Thus claimant is entitled to enhanced compensation of Rs.14,85,120/- with 7% interest p.a. from the date of petition i.e. 10th April, 2017 till realization of the entire payment.

[NITIN B. SURYAWANSHI]
JUDGE