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

FIRST APPEAL NO.4350 OF 2017

Bhimraj Annasaheb Deshmukh APPELLANT
Age – 40 years, Occ – Vegetable Seller
R/o Chitale Station, Taluka – Rahata
Now at Ramgad, Taluka – Shrirampur
District - Ahmednagar

VERSUS

1. Shriniwas Laxminarayan Bihani RESPONDENTS
Age -55 years, Occ – Business
R/o Om Chemicals
Behind Samrat Lodge,
Main Road, Shrirampur
District – Ahmednagar

2. The New India Insurance Co. Ltd.,
3rd Floor, Rushiraj Regency,
Near Vidya Vikas Circle
Nashik

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Mr. Vinayak S. Bedre, Advocate for the appellants
Mr. Mohit R. Deshmukh, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 17th OCTOBER, 2024

JUDGMENT :

1. Heard.

2. Admit.

3. Heard finally with the consent of learned advocates for the appearing parties.

4. By this appeal, filed under section 173 of the Motor Vehicles Act, the appellant – claimant challenges Judgment and

Award dated 22nd February, 2017 passed by learned Member, Motor Accident Claims Tribunal, Shrirampur in MACP No. 215 of 2015 and seeks enhancement of compensation.

5. Facts, in nutshell, can be stated thus -

On 7th April, 2015 at about 11.00 a.m., appellant was proceeding on his bicycle from Chitali to Shrirampur and when he reached near village Nimgaon Khairi, tanker No. MH-17/T-8231 came from Nimgaon Khairi side and gave dash to the bicycle of the appellant from behind. In the accident, appellant sustained grievous injuries to his right hand and right leg. He was shifted to Sakhar Kamgar Hospital, Shrirampur. Police registered Crime No. I-53 of 2015 against the driver of the offending tanker. Appellant filed claim contending that he was a vegetable seller and was earning Rs.10,000/- per month. Due to the injuries sustained in the accident, he is unable to carry out his vegetable selling business and he, therefore, claimed compensation of Rs.7,00,000/-

Opponent No.1 – owner of the offending tanker, opposed the claim, by filing written statement, contending that the driver of the offending tanker was holding valid and effective driving licence and the tanker was insured with opponent No.2.

Opponent No.2 – Insurer, opposed the claim by filing written statement, contending that there is non compliance of mandatory provision of sections 134 (c) and 156 (8) of the Motor Vehicles Act and the accident has taken place due to the negligence of the appellant. Breach of conditions of the insurance policy was also claimed.

The Tribunal, after recording evidence, partly allowed the claim and directed the respondents – opponents to jointly and severally pay compensation of Rs.2,72,000/- along with 8% interest p.a. The appellant – claimant is aggrieved by the inadequate compensation awarded by the Tribunal.

6. Heard learned advocate for the appellant and learned advocate for respondent No. 2- insurer. None appeares for respondent No.1, though served. Perused the record.

7. The Tribunal has assessed notional income of the appellant at Rs.3,000/- per month. It is not in dispute that the appellant is a vegetable seller. Learned advocate for the appellant has placed reliance on ***“Sayed Sadiq Etc V/s Divisional Manager, United India Insurance Company” 2014 (2) SCC 735***, In the said case, claimant had suffered injury in the accident occurred in 2008 and he was a vegetable vendor (same like that of the present appellant). The Apex Court, has assessed his notional

income at Rs.6,500/- per month, holding that he was not expected to produce documents to prove his monthly income and it would be reasonable to take his earning at Rs.6,500/- per month. The Apex Court also awarded future prospects to the claimant.

8. Appellant in the present matter is similarly situated. Indeed, in the case in hand, the Tribunal has erred in assessing notional income of the appellant at Rs.3,000/- per month, which in the light of the aforesaid rulling needs to be taken at Rs.6,500/- per month. The Tribunal has failed to add component of future prospects in the income of the appellant, while awarding compensation, which is payable to the claimant in the light of the decisions in ***Sayed Sadiq*** (*supra*), ***"T. J. Parameshwarappa @ Parameshwarappa @ J. T. Parmeshwarappa @ Talakena Godra Parameshwarapp V/s Branch Manager, New India Assurance Company Limited and Others" 2022 (11) JT 378*** and ***"Sidram V/s Divisional Manager, United India Insurance Company Limited and Another" (2023) 3 SCC 439.***

9. In the case in hand, though as per the evidence of PW-2 Dr. Bhagwat Gangadhar Murade, appellant has suffered 60% permanent disability, the Tribunal has assessed functional

disability of appellant at 30%, rightly so.

10. In view of aforesaid, the appellant is entitled for following compensation.

S. N.	Particulars	Compensation
01	Notional income	Rs.6,500/-
02	Addition of Future prospects @ 25 %	Rs.1,625/-
03	Monthly income after addition future prospects	Rs.8,125/-
04	Annual Income (8125 X 12)	Rs. 97,500/-
05	Functional disability 30 % (loss of income) (97500 X 30%)	Rs.29,250/-
06	Multiplier of 14 (29,250 X 14) Pecuniary loss	Rs.4,09,500/-
07	Medical Bills	Rs.1,00,800/-
08	Non Pecuniary Loss	Rs.33,800/-
09	Total	Rs.5,44,100/-
10	Compensation granted by the Tribunal	Rs.2,72,000/-
11	Enhanced compensation	Rs.2,72,100/-

11. For the aforestated reasons, following order:

ORDER

A. First Appeal is partly allowed with proportionate costs.

B. Impugned Judgment and Award dated 22nd February, 2017 passed by learned Member, Motor Accident Claims Tribunal, Shrirampur in MACP No. 215 of 2015 is modified by holding that the appellant – claimant is held entitled for enhanced compensation of Rs.2,72,100/- along with interest @ 8 % p.a. Rest of the Award is maintained.

[NITIN B. SURYAWANSHI]
JUDGE

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