IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3550 OF 2016

Digamber s/o Kanoba Tekale,
Age: 45 years, Occu: Agriculture & Vegetable Vendor,
Through Next Friend, Real Cousin Brother,
Madhav s/o Laxman Tekale,
Age: 40 Years, Occ: Agriculture,
Both R/o. Amrabad, Tq. Ardhapur,
Dist. Nanded. … Appellant
(Orig. Claimant)

Versus

1] Kamal w/o Maruti Rathod,
Age: Major, Occ: Business,
R/o Nimgaon, Tq. Hadgaon,
Dist. Nanded.

2] The New India Insurance Co. Ltd.,
Through its Manager,
Branch at Vazirabad, Nanded,
Tq. & Dist. Nanded. …Respondents
[Orig. respondents]

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Mr. Mahesh V. Ghatge, Advocate for Appellant
Mr. Aniruddha S. Usmanpurkar, Advocate for Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 19th AUGUST, 2024
PRONOUNCED ON : 02nd SEPTEMBER, 2024

JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing with the consent of the parties.

3. By this appeal filed under Section 173 of the Motor Vehicles Act, appellant / claimant challenges judgment and award

dated 19/04/2016, passed by the Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No.676/2009.

4. On 06/01/2009, claimant Digambar Kanoba Tekale was proceeding as a pillion rider along with Chandu Vyankati towards Nanded by motorcycle bearing registration No.MH-26-U-16. When the motorcycle reached near Maratala Bus Stand at Kapsi Tea Point, at 07:30 p.m. Jeep bearing No.MH-26-L-2768 came from opposite direction in high speed and gave dash to the motorcycle, due to which claimant and Chandu sustained grievous injuries and were admitted in hospital. During treatment Chandu expired.

5. Claimant sustained grievous injuries on head and other parts of the body. He was operated on 06/01/2009 and was admitted in Yashoda Hospital, Nanded, from 06/01/2009 to 21/04/2009. C.R. No.03/2009 came to be registered at Usmannagar Police Station for offence punishable under Sections 279, 337 and 338 of I.P.C. against driver of the Jeep (offending vehicle) and subsequently charge-sheet was submitted. By filing claim petition claimant sought compensation of Rs.7,00,000/-. Respondent No.1 owner of the offending vehicle failed to file his written statement. Respondent No.2 Insurance Company opposed the claim by filing written statement contending that claim petition is bad for non-joinder of necessary parties and the accident had taken place due to rash and negligent driving of motorcycle rider. Breach of terms

and conditions of policy is there as the driver of offending vehicle was not holding valid driving licence, hence, Insurance Company is not liable to pay the compensation.

By judgment and award dated 22/12/2011, Tribunal partly allowed the claim and awarded compensation of Rs.5,42,986/-. Being aggrieved by the inadequate compensation, claimant preferred First Appeal No.1585/2012. This Court gave direction that claimant be examined by Medical Board of J. J. Hospital, Mumbai, for expert opinion. The Medical Board issued certificate that claimant has sustained 100% permanent disability. On receipt of the said certificate this Court, by permitting parties to lead additional evidence, directed the Tribunal to reconsider enhancement of compensation. After remand, parties led additional evidence and claimant amended his claim and asked for compensation of Rs.40,00,000/-.

6. Tribunal, after considering additional evidence led by the parties, awarded compensation of Rs.12,08,026/- along with 7% interest per annum, to be paid by respondent Nos.1 and 2 jointly and severally. Being aggrieved by the quantum of compensation, claimant has preferred this first appeal.

7. Heard learned advocate for appellant/claimant and learned advocate for respondent No.2/Insurance Company. Though served, none appears for respondent No.1.

8. Learned advocate for claimant submits that claimant is self employed and Tribunal has assessed less notional income of claimant. Considering the fact that claimant is supporting family of seven persons, his earnings must be held at Rs.8,000/- per month and considering the fact that claimant is self employed, addition of 40% future prospects needs to be made in terms of ratio in ***National Insurance Co. Ltd. v. Pranay Sethi and Others, [2017 (16) SCC 680]***. Meager compensation of Rs.1,000/- per month is awarded by the Tribunal towards attendant charges. Tribunal has failed to award future medical expenses. No conveyance charges are awarded by the Tribunal. Tribunal has also erred in not applying multiplier of 16. In support of his submissions he relied on ***Rupesh Rashmikant Shah Vs. Elegant Industries Pvt. Ltd., Bombay and Another, [2015 (4) Mh.L.J. 511], Abhimanyu Partap Singh Vs. Namita Sekhon and Another, [2022 (8) SCC 489]*** and ***Syed Sadiq Etc. Vs. Divisional Manager, United India Insurance Company, [2014 (2) SCC 735]***.

9. Per contra, learned advocate for respondent No.2 Insurance Company submitted that Tribunal has rightly applied multiplier of 15 as per the ratio in ***Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another, [AIR 2009 SC 3104]***. He distinguished the decision in ***Rupesh Rashmikant***

Shah (supra), contending that in that case age of the insured was 8 years and therefore, the calculations arrived at in the said decision are not applicable to the facts of the present case. He submitted that, considering the fact that accident had taken place in the year 2009, an amount of Rs.1,80,000/- awarded in the year 2016 towards future diet and attendant charges is adequate. There is no evidence to show that attendance and supervision is required to claimant for lifetime. According to him, there is no material to show quantification of future medical expenses. Doctor has not stated anything about future medical expenses. Also, there is no evidence on record to show the income of claimant. Even income of Rs.3,000/- per month in the year 2009 as assessed by the Tribunal is at higher side. He fairly conceded that in terms of ratio in ***Pranay Sethi*** (supra) 40% future prospects needs to be awarded to claimant.

10. Heard learned advocate for appellant and learned advocate for respondent No.2 at length. Perused the record.

11. Accident is not in dispute. In support of his claim, claimant has examined PW4 Dr. Ruturaj Narandrakumar Jadhav, who has treated him in Yashoda Hospital, Nanded, and claimant was going to him for follow up. He deposed that "*During follow up of patient Digambar, I noticed that he is disoriented and he has incontinence of urine. If a patient is having incontinence of urine,*

then the said patient is treated as a 100% disability patient. ..... To control epilepsy disease to Digambar, medicine is prescribed by me. In case patient who suffered from epilepsy forgets to take the tablet, then there are chances of attack of epilepsy". He agreed by the opinion given by medical board of J.J. Hospital, Mumbai.

Disability Certificate at Exhibit-47 issued by J. J. Hospital, Mumbai, clearly indicates that claimant has global aphasia, bowel and bladder incontinence, he can walk but is totally dependent on relatives for his routine activities and therefore, he has suffered 100% permanent disability. As he is totally dependent on relatives for his routine activities, he will be permanently requiring attendant. Considering the medical evidence brought on record, the Tribunal has committed an error in awarding meager amount of Rs.1000/- per month towards attendant charges.

12. Since claimant was not in a position to depose before the Tribunal, his wife Dwaraka entered the witness box in support of claim. Madhav Laxman Tekale, cousin of claimant, is examined by claimant in support of the claim. He deposed that claimant was earning Rs.1,00,000/- per annum from agriculture and was also doing vegetable selling business and earning Rs.3,000/- per month. He was self employed person. He also produced copy of sugarcane bills issued by Bhaurao Chavan Sahakari Sakhar Karkhana, Nanded.

The Tribunal though accepted that claimant has suffered

100% disability, and has assessed monthly income of claimant at Rs.3,500/- per month i.e. Rs.42,000/- per year, without giving any reason as to on what basis it has arrived at that figure.

13. In ***Syed Sadiq*** (supra) claimant was a vegetable vendor. He suffered 85% permanent disability in an accident occurred in the year 2008. The Apex Court held that, claimant is not expected to produce documents to prove his monthly income and it would be reasonable to take is earning at Rs.6,500/- per month. Considering that the age of claimant at the time of accident was 24, 50% increment in future prospects of income was added. The apex Court has held;

> *"9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."*

14. In the case in hand, the Tribunal without assigning any reason has assessed monthly income of claimant at Rs.3,500/-, when there is evidence on record that he was vegetable vendor and was also earning from agriculture. Considering the aforesaid observation, monthly income of claimant is to be assessed at Rs.6,500/- per month and therefore, annual income would be Rs.6,500 x 12 = Rs.78,000/-.

15. The Tribunal without assigning any reason has failed to add future prospects while calculating the compensation. Considering the fact that claimant was self employed being vegetable vendor and was 31 years old at the time of accident, in terms of ***Pranay Sethi*** (supra) 40% amount towards future prospects needs to be awarded. Thus, future income of claimant would be Rs.78,000 + Rs.31,200 (40%) = Rs.1,09,200/-. Learned advocate for claimant is right in submitting that as claimant was 31 years old at the time of accident, as per ratio in ***Smt. Sarla Verma*** (supra), multiplier of 16 is applicable. Hence, total loss of future income would be Rs.1,09,200 x 16 = Rs.17,47,200/-.

16. Learned advocate for Insurance Company is right in contending that there is no evidence brought on record by claimant to show that he will be needing future medical treatment for which compensation needs to be awarded. Even the Doctor examined by claimant has not stated anything in this behalf. Therefore, claimant is not entitled for compensation under this head.

17. In terms of ***Abhimanyu Partap Singh*** (supra), compensation under the head ‘future loss and attendant charges’ is to be determined by applying multiplier method. Tribunal has awarded Rs.1,000/- towards future diet and attendant charges which in the facts of the present case is grossly inadequate. In ***Rupesh Rashmikant Shah*** (supra) this Court by considering the

fact that claimant suffered 100% disability held that claimant requires constant attendance in regards to his physical condition. In that case, Tribunal awarded Rs.25,000/- towards attendant charges and this Court awarded Rs.2,000/- per month under this head and by applying multiplier of 18, held that claimant is entitled for Rs.4,32,000/- under this head. As the claimant in present case has suffered 100% disability and is dependent on the relatives for day to day routine, in my view he is entitled for Rs.2,000/- per month towards attendant charges and by applying multiplier of 18, claimant needs to be awarded Rs.4,32,000/- towards attendant charges.

18. In ***Abhimanyu Partap Singh*** (supra), it is held;

> *"21. Under the head "non-pecuniary damages", the claimant has faced the pain, suffering and trauma as a consequence of injuries. It is to observe that to award compensation under the head "pain, shock and suffering", multiple factors are required to be considered from the date of accident, which include the prolonged hospitalization and regular medical assistance, nature of the injuries sustained, the operations underwent and the consequent pain, discomfort and suffering. Simultaneously, he has to suffer post-accident agony for whole life, including the amenities of life, which he can enjoy as a normal man but unable to do so on account of permanent disability. In the era of competition, he can perform better as a normal man but is unable to compete with others. Therefore, under the head "pain, shock and suffering", amount of compensation deserves to be granted.*
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> *22. The M.A.C.T. awarded Rs.4,00,000/- in the head of loss of*

expectation of life, loss of marital bliss, total loss of enjoyment of life and amenities of life, permanent disability, pain and sufferings while the High Court granted the same amount bifurcating it in the head of loss of amenities in life and marital bliss to Rs.3,00,000/- while special diet Rs.1,00,000/- making the total Rs.4,00,000/-.

23. Considering the facts and circumstances of the case and nature of injuries in our considered opinion, the appellant is entitled for a sum of Rs.4,00,000/- in the head of loss of amenities of life and marital bliss, pain and sufferings, loss of enjoyment and loss of expectancy, Rs.1,00,000/- as awarded by the High Court is maintained in the head of special diet. Thus, in the non-pecuniary heads, the compensation as determined comes to Rs.5,00,000/-."

19. In the case in hand, no compensation is awarded by the Tribunal under the head non-pecuniary damages. Tribunal has also failed to award compensation under the head pain, shock and suffering and loss of amenities of life and marital bliss, loss of enjoyment and loss of expectancy. In my view claimant is entitled for Rs.4,00,000/- under this head. Thus, the compensation under non-pecuniary heads is determined at Rs.4,00,000/-.

20. Claimant is, therefore, entitled for compensation as follows,

Sr.No.	**Particulars**	**Amount**
1	Total Loss of future income	Rs.17,47,200/-
2	Towards medical treatment, expenses and bills	Rs.3,98,026/-
3	Towards attendant charges	Rs.4,32,000/-

4	Towards non-pecuniary damages	Rs.4,00,000/-
5	**Total Compensation to be awarded**	**Rs.29,77,226/-**
	Compensation awarded by the Tribunal	Rs.12,08,026/-
	Total Enhanced Compensation (Rs.29,77,226 - Rs.12,08,026)	**Rs.17,69,200/-**

21. Resultantly, the appeal is partly allowed with proportionate costs. Claimant is held entitled for enhanced compensation of Rs.17,69,200/-. The enhanced amount shall carry interest @ 7% per annum from the date of registration of claim petition till its realisation.

22. Respondent No.2 Insurance Company shall deposit the compensation amount in the Tribunal within 12 weeks from the date of up-loading of this judgment. Claimant shall pay deficit Court fees, as per rules.

(NITIN B. SURYAWANSHI, J.)