IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2500 OF 2021 WITH
CIVIL APPLICATION NO.13834 OF 2023

Prashant s/o Sukhdev Kale,
Age 37 years, Occ. Nil,
R/o Omkar Nagar, Kedgaon,
At Post Tq. Dist. Ahmednagar … **APPELLANT**
(Orig. Claimant)

VERSUS

1. Shaikh Shabir s/o Shaikh Ahmed
Age 45 years, Occ. Driver,
R/o Vishwakarma Colony, Verul,
Tq. Khultabad, Dist. Aurangabad
Mob. 9421686829

2. Rangnath s/o Govindrao Mali,
Age major, Occ. Business (Owner)
R/o Plot No.85, N-1, Hari Niwas, CIDCO,
Aurangabad

3. The New India Assurance Co. Ltd.,
through its Branch Manager,
Branch office at Adalat Road,
Aurangabad … **RESPONDENTS**
(Orig. Respondents)

....

Mr. S.B. Rajebhosale, Advocate for appellant
Mr. Punit S. Mehta, Advocate for respondent No.1
Mr. R.N. Chavan, Advocate for respondent No.2
Mr. S.V. Kulkarni, Advocate for respondent No.3
(Applicant in X-Objection No.116/2023

....

WITH

CROSS OBJECTION NO.116 OF 2023 IN
FIRST APPEAL NO.2500 OF 2021

The New India Assurance Company Ltd.,
through its Branch Manager/
Authorized Signatory,
Mahesh Auto Compound,
Adalat Road, Aurangabad,
Tq. & Dist. Aurangabad … **CROSS OBJECTIONER**
(Orig. Respondent No.3)

VERSUS

1. Prashant s/o Sukhdev Kale,
Age 37 years, Occ. Nil,
R/o Omkar Nagar, Kedgaon,
Tq. Dist. Ahmednagar

2. Shaikh Shabir s/o Shaikh Ahmed
Age 45 years, Occ. Driver,
R/o Vishwakarma Colony, Verul,
Tq. Khultabad, Dist. Aurangabad

3. Rangnath s/o Govindrao Mali,
Age major, Occ. Business (Owner)
R/o Plot No.85, N-1, Hari Niwas, CIDCO,
Aurangabad, Tq. & Dist. Aurangabad

… **RESPONDENTS**
(No.1 Orig.Claimant, No.2 & 3 Orig. Respdts. No.1 & 2)

....

Mr. S.V. Kulkarni, Advocate for Cross Objectioner
Mr. S.B. Rajebhosale, Advocate for respondent No.1
Mr. Punit S. Mehta, Advocate for respondent No.2
Mr. R.N. Chavan, Advocate for respondent No.3

....

CORAM : R.G. AVACHAT AND NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 13th August, 2024.

Date of pronouncing judgment : 13th September, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

This is an appeal under Section 173 of the Motor Vehicles Act. The appellant herein was the original petitioner/ claimant in Motor Accident Claim Petition (MACP), No.497/2016. He met with accident involving motor vehicle and thereby suffered permanent disability. He, therefore, preferred the MACP before the Motor Accident Claims Tribunal (MACT), Aurangabad. The learned Member, MACT, Aurangabad, vide judgment and award dated 22/3/2021, directed the respondents No.1 to 3 herein (original respondents No.1 to 3) to jointly and severally pay the appellant/ claimant a sum of Rs.77,43,696/- with interest @ 9% p.a. thereon from the date of petition to the date of its realisation. A sum of Rs.17,43,696/- was directed to be kept in fixed deposit for three years in any of the Nationalised Bank of the appellant's choice.

2. Being aggrieved and not satisfied with the quantum of compensation awarded by the learned Member, the present appeal has been preferred for enhancement of compensation.

3. The respondent No.3 Insurance Company has preferred Cross-Objection in this appeal on the following two grounds:-

(I) Contributory negligence, and

(II) The appellant/ claimant to have received a salary for a period of four years immediately after he met with the accident and the same amount has also been awarded by the Tribunal. That much amount i.e. Rs.17,07,650/- was sought to be reduced from the amount of compensation awarded by the Tribunal.

4. The facts giving rise to the present appeal are as follows :-

The appellant had been serving with a Company, “Exide”, a known manufacturer of batteries. He was serving as Senior Accounts Officer with a monthly pay of Rs.36,550/-. On 9/11/2015 by 5.55 p.m., the claimant was on his way back home on his motorbike bearing Registration No.MH-16/AB-6285 after his duty hours were over. While he was passing by *Vit Bhatti* (Brick Kiln) on Kedgaon Bypass-Kalyan Road, one Innova Car bearing Registration No.MH-24-F-3540 came in high speed from opposite side. The car was being driven by respondent No.1 in a rash and negligent manner. It lost its track and knocked down the appellant. The appellant thereby suffered multiple injuries and paraplegia as well. The car belonged to the respondent No.2. Admittedly, the car had an insurance cover granted by the respondent No.3 Insurance Company.

5. The learned Member of the Tribunal held the respondent No.1 to be exclusively responsible to the accident and resultant injuries suffered by the appellant and granted the compensation as stated above. The details thereof (split up) will be referred to at appropriate stage.

6. Heard. The respondents No.1 and 2 remained absent in spite of service of notice of this appeal. Both, the appellant and Number Three respondent – Insurance Company filed written notes of arguments. The appellant filed an application (Civil Application No.13834/2023) for additional evidence. The additional evidence proposed to be adduced is in the nature of medical bills worth Rs.23,73,467/-. As stated above, the respondent Insurance Company has come with a defence of contributory negligence and the claimant to have received four years salary from his employer and equal amount of compensation for that period from the Insurance Company as well. That much amount i.e. Rs.17,07,650/- was,

therefore, sought to be reduced from the amount of compensation awarded by the Tribunal.

7. Perused the written submissions. Learned Advocate for the appellant has placed on record detailed notes of arguments along with a host of citations. According to him, the appellant suffered 80% of disability. The functional disability was, however, 100%. According to learned Advocate, the Tribunal erred in awarding compensation considering the loss of future earning to be at 80% of his total income. According to the learned Advocate, the Tribunal ought not to have observed the appellant would be able to do a sitting job. Had the appellant been granted compensation considering him to have suffered 100% of functional disability, he would have been entitled for addition of 50% therein towards future prospects. Moreover, a very meagre amount has been awarded on the count of non-pecuniary compensation. No compensation has been awarded under various heads. According to learned Advocate, the appellant has now become wheel chair bound person. He is required to sleep on air-inflated or water bed. Physiotherapy Sessions are required throughout his life. Nothing has been awarded on account of loss of amenities in life. The appellant is unable to enjoy

sexual pleasure. Accompanied to him, the appellant is required around Rs.60 Lakhs for future medical expenditure. The appellant is required to undergo operation for removal of implants. He, therefore, urged for enhancement of amount of compensation to a great extent.

8. Learned Advocate for the Insurance Company, as stated above, adverted our attention to the crime scene panchanama to indicate it to be a head on collision. He would submit that, it was a case of contributory negligence. The appellant was equally responsible for his sufferings as a result of the accident. He availed double benefit of four years salary. The learned Advocate, therefore, urged for allowing the Cross-Objection.

9. In reply to the Cross-Objection, the learned Advocate for the appellant submitted in writing that a crime has been registered against the driver of the offending vehicle. The crime scene panchanama would indicate the car lost its track and went to its wrong side before it knocked down the appellant. The car driver did not step into the witness box. So far as regards availment of salary for first four years next after the accident is concerned, he would submit that, the appellant

is entitled for one month Earned Leave every year. He has lost the benefit thereof for remainder of his service. Whatever was granted by the employer Company was towards the same and may also be considered as ex-gratia payment. The same, therefore, could not be deducted from the appellant's entitlement of compensation under various heads.

10. Considered the written submissions. Perused the evidence on record and the authorities relied on. Following points arise for determination.

(1) Whether it was a case of contributory negligence ?

(2) Whether the appellant proved to have suffered 100% of functional disability ?

(3) Whether the appellant proved to have not been granted compensation under various heads and therefore entitled for enhancement as urged for ?

(4) What order ?

11. **<u>As to Point No.1</u>** : Admittedly the accident between the motorbike ridden by the appellant and the Innova Car driven by the respondent No.1 occurred on 9/11/2015 by little past 6.00 p.m. at Kedgaon Kalyan By-pass Road. The

appellant testified on oath, wherein he gave details as to how the accident took place. The driver of the offending vehicle did not examine himself on oath. On due investigation, the charge sheet has been filed against him for being responsible to the accident and resultant injuries. The crime scene panchanama (Exh.61) indicate the Innova Car to have had not kept left side of the road while proceeding along Kalyan Kedgaon Bypass. It also indicates the car left its track and went to somewhat wrong side and dashed against the motorbike ridden by the appellant. There being no other evidence to indicate the appellant to have slightly been responsible or a contributory to the accident, we find the Tribunal's finding holding the driver of the offending vehicle to be exclusively responsible to the accident calls for no interference. Point No.1 is thus answered accordingly.

12. **<u>As to Point No.2 to 4</u>** :- The appellant tendered in evidence various documents in the nature of hospital and medical bills. Admittedly, he was indoor patient for about 8 months at various hospitals. The respondent Insurance Company admitted the disability certificate (Exh.196) issued by the Medical Board headed by the Committee of Civil Surgeon, Ahmednagar indicating the appellant/ claimant to have

suffered post traumatic paraplegia and suffered 77% of physical disability. The Disability certificate shows :-

Disability	**Affected part of Body**	**Diagnosis**
Physical Impairment	***Bil. L/L***	***Post traumatic paraplegia***

The above condition is Permanent, non-progressive, not likely to improve.

While the appellant tendered in evidence another certificate issued by Dr. Jaiswal. The appellant examined him as his witness. Admittedly, he was not a treating doctor. The certificate issued by him indicates the appellant to have suffered 80% of disability. The Tribunal has considered the said certificate. The respondent Insurance Company has not traversed the same before us. Both the disability certificates indicate the petitioner to have suffered following injuries :

> "Fracture shaft femur and fracture radius ulna right side with fracture dorsal vertebrae fourth and fifth with paraplegia with acute renal artery thrombosis."

13. The appellant placed on record document indicating his employer to have terminated him from service.

The aforesaid injuries coupled with the fact that the petitioner suffered paraplegia lead us to infer the appellant to have suffered 100% of functional disability. True, he may move a bit with sitting in a wheel chair. It would, therefore, be anybody's guess who would employ him and at what salary.

14. The appellant placed on record the income tax return for the Assessment Year 2015-2016 (Exh.89). His annual income was Rs.4,18,200/-. A sum of Rs.10,628/- was paid towards income tax. That much amount has been deducted therefrom besides a sum of Rs.2500/- towards Professional Tax. The annual income of the petitioner was considered at Rs.4,05,072/-. As the petitioner was in the age group of 31-32, relying on the judgment of the Apex Court in case of **Sarla Verma & Ors.Vs. Delhi Transport Corp. & Anr. [AIR 2009 SC 3104]**, a multiplier of 16 was applied. Applying the same, his income was arrived at Rs.64,81,152/-. Considering the appellant to have suffered 80% of functional disability and treating it to be his future loss of earning, he was awarded 80% of the said amount, which came to Rs.51,84,921/-. The appellant candidly admitted before the Tribunal to have received Rs.3 Lakhs towards mediclaim. That much amount was also deducted from the amount of

compensation. Thereafter the amount of compensation under that head was calculated at Rs.48,84,921/-. The compensation granted under other heads and detailed in paragraph No.42 of its judgment is as under :

> 42. In the circumstances, the claimant is entitled for total compensation amount as follows :
>
> Rs.48,84,921 Towards future loss of earning.
> Rs.01,00,000/- Towards Pain & sufferings, attendance charges, diet charges, loss of amenities, etc.
> Rs.17,927/- Towards medicine purchase bill.
> Rs.4,200/- + Rs.9,530/- + Rs.10,000/- Hospital Bills
> Rs.05,54,654/- + Rs.13,050/- Towards KEM Hospital Bill, Pune
> Rs.11,60,000/- + Rs.15,380/- + Rs.48,000/- + Rs.100/- + Rs.1,078/- Towards MRI Brain, etc.
> Rs.2,78,800/- Towards loss of Salary Income of claimant for nearabout 8 months during the hospitalization period.
> Rs.6,46,056/- Towards Hospital & Medical Bills as admitted by Insurance Company vide Exh.197 to Exh.209
>
> <u>Rs.77,43,696/-</u>

15. In our view, when the appellant has suffered multiple injuries and afflicted by paraplegia, it is a case of 100% functional disability. The Tribunal ought to have granted him the compensation considering it to be a case of loss of

100% functional disability. We, therefore, recalculate the compensation under the head of loss of future income and earning capacity as under :

16. In view of the directions of the Constitution Bench of the Apex Court in case of **National Insurance Company Limited Vs. Pranay Sethi [AIR 2017 SC 5157]**, 50% of annual income of the appellant is added towards future prospects since he was in permanent employment. Thus, the amount of compensation on account of loss of future earning would be as under :

Rs.4,05,072/- + 50% =	2,02,536 =	Rs.6,07,608/-
	X Multiplier 16 =	Rs.97,21,728/-

He has been granted Rs.2,78,800/- towards loss of salary income for a period of 8 months of hospitalization. The same would be considered as compensation on account of loss of leave. We do not propose to make any interference with the said quantum of compensation. On account of hospital and medical bills, a total sum of Rs.18,70,614/- has been granted (duly proved/ admitted by the respondent Insurance Company).

17. True, under the head of loss of income the appellant has been awarded compensation for the period commencing from the date of the accident. Whereas he has admittedly received a salary for a period of four years next after the date of the accident. The said quantum gets covered under the head of loss of future income. As such, ostensibly the appellant has received compensation twice for a period of four years. We take it as an ex-gratia payment made by the employer. We also do not propose to make any deduction on that count since we are not granting the appellant any amount towards medical bills placed on record as additional evidence. The learned Advocate for the appellant before the Tribunal had proved the hospital and medical bills. Here he did not urge for permission to lead additional oral evidence in proof of the bills. The bills are not for small amount. The bills placed on record as additional evidence are worth Rs.23,73,467/-. We, therefore, do not propose to grant any compensation on account of those bills though we were inclined to grant the appellant a lumpsum amount towards future medical treatment.

18. The appellant examined P.W.11 Sumedh Kedare in proof of future medical expenditure. He would be required to

spend a sum of Fifty to Sixty Lakhs towards future medical expenditure. No details thereof have been given. We, therefore, propose to award him a lumpsum of Rs.30 Lakhs towards future medical expenditure including Physiotherapy charges, undergoing operation for removal of implant etc. Under the head pain and suffering, attendant charges, diet charges, loss of amenities etc., a very meagre sum of Rs.1 Lakh has been awarded by the Tribunal. On account of pain and suffering and loss of amenities in life, we propose to grant the appellant a sum of Rs.15 Lakhs. The appellant has relied on the judgment of the Apex Court in case of **Sidram Vs. Divisional Manager, United India Insurance Co. Ltd. [2022 (16) SCALE 452]**. It was case wherein the injured had suffered 45% of disability in the nature of paraplegia. In paragraph no.32 of its judgment, it has been observed thus :

> "32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

19. It then referred to the Apex Court judgment in case of **R.D. Hattangadi V. Pest Control (India) (P) Ltd. [AIR 1995 SC 755]** and reproduced paragraph 9 thereof as under :

> "9. Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non- pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

20. The appellant has also placed on record a copy of the judgment in case of R.D. Hattangadi (supra), wherein the compensation has been awarded for Physiotherapy, bedsore dressing charges, wheel-chair, Fowler's bed etc. It was a judgment delivered way back in 1995. With the passage of

time, the charges thereof must have been increased. We, therefore, propose to grant the appellant a sum of Rs.1 Lakh towards wheel-chair. He would be required to be attended at least by one person. On that count, a total sum of Rs.10 Lakhs is proposed to be awarded. We are not inclined to grant any compensation on account of travelling expenses already incurred and likely to incur. The appellant being permanent resident of Ahmednagar, preferred to file the claim petition before the Tribunal at Aurangabad. Although the compensation has been claimed under various heads, we are not inclined to grant the same since a lumpsum amount of Rs.30 Lakhs has been awarded towards future medical expenses, besides under other heads referred to hereinabove. Thus the total compensation comes to Rs.1,53,21,728/- (Rs.97,21,728 + 30 Lakhs + 15 Lakhs + 1 Lakh + 10 Lakhs.) We round it of to Rs.1,55,00,000/- (Rupees One Crore Fifty Five Lakhs only). The additional amount while making the figure round off is considered towards miscellaneous expenses which the appellant may be required to incur.

21. For all the aforesaid reasons, the appeal partly succeeds. The Cross-Objection fails. Both the appeal and the

cross-objection, therefore, stand disposed of in terms of the following order :

<u>O R D E R</u>

(i) The First Appeal is partly allowed.

(ii) The amount of compensation awarded by the Tribunal is enhanced from Rs.77,43,696/- (Rupees Seventy Seven Lakhs Forty Three Thousand Six Hundred Ninety Six) to Rs.1,55,00,000/- (Rupees One Crore Fifty Five Lakhs only). The amount of enhanced compensation i.e. Rs.77,56,304/- (Rupees Seventy Seven Lakhs Fifty Six Thousand Three Hundred and Four) shall carry interest @ 7% p.a. from the date of claim petition i.e. 22/8/2016 to the date of payment.

(iii) The Cross-Objection stands dismissed.

(iv) Civil Application No.13834/2023 stands disposed of.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

fmp/-