

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 630 OF 2020

Shri. Sunil Sakharam Gholap]
Age – 57 years, Occu. - Contractor]
R/at Bavdhan, Taluka – Wai]
District – Satara.]...Appellant

vs.

1. Shri. Nitin Dilipkumar Chatur]
Age – 32 years, Occu. - Driver,]
R/at 145/3, A3/3, near Jaimalhar Society]
Khed, Tal. and Dist. Satara]

2. Tata, AIG General Insurance Company]
Opposite – Peninsula Corporate park,]
Piramal Tower, 9th floor,]
Ganpatrao Kadam Marg,]
Lower Parel, Mumbai-400013.]...Respondents

Mr. Mandar Limaye :-	Advocate for Applicant.
Mr. Shankar Katkarr i/b. Ms. Manisha Devkar :-	Advocate for Respondent Nos. 1 and 3.
Mr. Devendranath Joshi (VC):-	Advocate for Respondent No. 2.

CORAM : S. M. MODAK, J.

DATE : 21st AUGUST 2024

ORAL JUDGMENT :-

1. Heard learned Advocate Mr. Limaye for the Appellant / claimant and learned Advocate Mr. Joshi for Respondent-Insurance Company. The Appeal is for enhancement of the compensation.

2. ADMIT. Appeal is taken up for final hearing by consent.

3. The Appellant met with an accident on 25th March 2014. He is a Civil Contractor by profession. When he was riding on his Shine Motorcycle he was dashed by Respondent No.1 by his Mahindra Pickup van. The Applicant sustained fractures to his right hip and displaced comminuted fracture lower end tibia and fibula right side. He has taken treatment in the hospital of Dr. Karne at Pune. He was hospitalized from 25th March 2014 to 13th April 2014 and thereafter taken treatment as indoor patient till 21st August 2014. His claim was partly allowed by the Motor Accident Claims Tribunal, Satara [Tribunal]. He gave evidence so also gave evidence of Dr. Karnik. The Tribunal has awarded compensation of Rs.3,06,000/- (Rupees Three

Lakh Six thousand only). According to Appellant, it is inadequate. The findings of the trial Court on the point of compensation and grievances of the appellant are as follows :-

- (i) Monthly income was considered as **Rs.16,600/-** whereas it ought have been approximately **Rs.20,000/-** per month according to the appellant. (On the basis of three income tax returns.)
 - (ii) The Tribunal has considered only 12% functional disability whereas there is 40% disability to right leg.
 - (iii) The multiplier was not made applicable.
 - (iv) Loss of future income and loss of future prospects were not considered.
4. He has produced table showing the just compensation. For these reasons Appeal is filed. Mr. Limaye relied upon the following judgments :-

- (i) **Raj Kumar vs. Ajay Kumar and another**¹

It is on the point of loss of earning capacity due to disability and the Tribunal is required to consider loss of future income. (Para-14).

- (ii) **Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U. P. Road Transport Corporation.**²

Wherein the Hon'ble Supreme Court has considered the compensation for future prospects even though there is rise in income. (Para-20).

¹ (2011) 1 SCC 343.

² Civil Appeal Nos. 9070-9071 OF 2022 decided on 9th December 2022.

(iii) **Hareshwar Harischandra Mistry vs. Pravin B. Nayak & Anr.**³

Wherein on the basis of facts this Court has considered 20% loss of income on the basis of 20% permanent disability. (Para-16).

5. Learned Advocate Mr. Joshi made following submissions :-

- (a) He has invited my attention to the evidence given by the Dr. Narayan Karne. He deposed 40% disability to right leg whereas there was 10 to 12% disability considering the entire body. It is submitted that the Claimant has earlier also suffered with fractures on two occasion. Firstly on 1st May 2005 and Secondly on 14th October 2006. In view of that it cannot be said that the disability is due to the present accident.
- (b) He invited my attention to the admission given by the Claimant in paragraph No. 16. He has shown readiness to produce proof of the income however, he has not produced.
- (c) There is no evidence about functional disability.
- (d) Once income tax returns are not filed, adverse inference has to be drawn about rise in income after the accident.
- (e) He has relied upon the observations in case of ***Raj Kumar*** (supra). It is in respect of co-relation in between physical disability and functional disability. Whether due to accident the functional disability is there or not depends upon earning capacity of the claimant.

3 First Appeal No. 2144 of 2011 decided on 4th January 2022.

CONSIDERATION

6. It is true that Claimant has referred income tax returns for the year 2011-12, 2012-13, 2013-14 and 2014-15 in paragraph No. 10 of his affidavit. However, I am only shown returns for the year 2011-12, 2012-13 and 2013-14. They were considered by the Tribunal in paragraph No. 22.

7. It is true that the accident took place on 25th March 2014. These returns can only show how much was the income of the Claimant as on the date of accident. The Tribunal has considered it as Rs.16,600/- per month. However, returns from the compilation show yearly income as follows :-

(a)	Assessment year 2010-2011. (Page-53).	The assessed income is :- Rs. 1,74,770/-
(b)	Assessment year 2011-2012.	The assessed income is :- Rs. 1,84,030/-
(c)	Assessment year 2012-2013.	The assessed income is :- Rs. 2,31,540/-

8. So total income comes to Rs. 20,000/- per month. This has to be considered as basis for the compensation. It is not clear how the

Tribunal has considered monthly income as Rs.16,600/-.

9. It is true that in case of **Yadava Kumar** Hon'ble Supreme Court has considered the loss of future income. According to Mr. Joshi, in that case Claimant was Painter by occupation and the disability was considered as 20% for the whole body. Whereas in case of **Mohammad Sabeer** according to Mr. Joshi there was a functional disability at 35% because there were injuries to lower limb.

10. It is true that Appellant has not produced income tax returns for the period after accident. So there is no material available to infer whether there will be loss of future income or not. However, it is true that doctor in his cross examination has opined that the Claimant cannot walk for a long period. According to Mr. Limaye, he is a Contractor that is why he is required to walk. It is very well true that from the evidence of the doctor, it is difficult to infer that the disability was due to the reason of accident only (because there were earlier accidents also). His evidence is not very clear. He has considered 12% disability. There is a disability of 40% to right leg and 10 to 12% for the entire body. Considering the evidence I am of the opinion that 12%

injury as observed by the Tribunal is correct.

11. It is but certain that due to the accident there will be restrictions on the movement of Appellant to certain extent. So certainly the Tribunal was not correct in refusing the claim for loss of future income.

So what I find is that the Tribunal has only **committed mistake in considering Rs.16,600/- as monthly income. It ought to have been Rs.20,000/-**. So also multiplier of 9 need to be made applicable.

12. It is true that the Tribunal has granted compensation of all heads except loss of future income and loss of future prospects. These heads need to be considered. In view of that two heads need to be calculated assuming monthly income as Rs.20,000/- per month. In view of that, following modifications are allowed :-

Sr. No.	Head	Amount
1	Minimum annual income of Appellant = Rs. 20,000 x 12 = 2,40,000/- Loss of future income at the level of his disability (i.e. 20%) = 12% of Rs.2,40,000/- = 28,800/- p.a. Rs.28,800/- x 9 (Multiplier) = 2,59,200/-	Rs. 2,59,200/-
2	Loss of future prospect = Rs.2,59,200 x 10%	Rs. 25,920/-
3	Hospitalization and Medical bills (same)	Rs. 2,80,000/-
4	Loss of earning during treatment (same)	Rs. 15,000/-
5	Loss of amenities (same)	Rs. 5,000/-

6	Pain and suffering (same)	Rs. 15,000/-
7	Extra nourishment, nursing, attendant and travelling expenses (same)	Rs. 5,000/-
	Total	Rs. 6,10,120/-
	Tribunal awarded amount	Rs. 3,20,000/-
	Total after deducting tribunal awarded amount	Rs. 2,90,120/-

12. Certainly the Applicant is entitled for interest at the rate of 7% per annum on this amount. Hence following order is passed :-

ORDER

- (i) Appeal is partly allowed.
- (ii) The Appellant is entitled to enhanced compensation of Rs. 2,90,120/- (Rupees Two Lakh Ninety Thousand One Hundred Twenty only) alongwith interest at the rate of 7% per annum from the date of filing of petition till realization.
- (iii) The Respondents are jointly and severally liable to pay that amount to the Appellant. They are directed to pay that amount within 8 weeks from today before the Tribunal, Satara.
- (iv) On deposit, the Appellant is entitled to withdraw that amount.

[S. M. MODAK, J.]