IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.88 OF 2001

1. Balu Nivrutti Pathak (died), ...**APPELLANT**
Through LRs [Ori. Applicant]
1-A] Sunanda Wd/o. Balu Pathak,
Age-40 years, Occu-Household,
1-B] Samadhan S/o. Balu Pathak,
Age-14 years, Occu-Education,
1-C] Puja D/o. Balu Pathak,
Age-10 years, Occu-Education,
1-D] Deepak S/o. Balu Pathak,
Age-09 years, Occu-Education,
All R/o. Kuldharan, Tq. Karjat,
Dist. Ahmednagar
Applicants Nos. 1-B and 1-C are represented
through Applicant No.1-A, who is the legal Guardian.

VERSUS

1. The name of Opp. No.1 is deleted vide Exh.46.
2. Deepak Vithawas Kirad, Age-42 years, Occu-Business,
R/o.356, Nana Peth, Pune
3. New India Insurance Company, Pune
4. Bora Transport Co., Press Chambers, 156, Ganeshpeth, Pune
5. United India Insurance Company, Pune ...**RESPONDENTS**

Mr. Pradip S. Jadhav, Advocate h/f Mr. V. P. Latange, Advocate for the appellants
Mr. Mohit R. Deshmukh, Advocate for respondent No.3

CORAM : ABHAY J. MANTRI, J.
DATE : 16th OCTOBER, 2025

ORAL JUDGMENT :

1. The original claimant/appellant, being dissatisfied with the impugned judgment and order dated 23-12-1999 passed by the learned MACT, Ahmednagar (for short, the '***Tribunal***'), in MAC Application No.75/1990, thereby partly allowed the petition against

respondent Nos. 2 and 3, has preferred this appeal for enhancement of the compensation amount.

2. It is pertinent to note that during the pendency of the appeal, the original claimant/appellant expired on 26-08-2009. Accordingly, his legal heirs are brought on record.

3. Heard the learned advocate for the appellants and respondent No.3-Insurance company. None appears for the rest of the respondents. Perused the impugned judgment and record and the judgments relied on by the learned advocate for the appellants.

Factual Matrix :

4. On 13-08-1989, the original claimant was driving Tempo No. MTQ 4939 (for short,-'***tempo***') from Aurangabad to Ahmednagar, when he was near the Kangoni phata, the Truck bearing No. MTD-2698 (for short,-'***truck***') came from the opposite direction in a rash and negligent manner and at high speed from the wrong side and gave a dash to the tempo. Opponent No.1 was driving a truck. In the said accident, the original claimant/appellant sustained injuries. Accordingly, crime No. 198/1989 was registered at Newasa Police Station against the Truck driver.

5. Due to the injuries sustained by him, he was taken to Mission Hospital at Vadala. Thereafter, he was shifted to Booth Hospital, Ahmednagar. His left leg was severely fractured and

infected. Therefore, it was amputated below the knee. As such, he has sustained permanent disability.

6. The truck was owned by Opponent No. 2 and insured with Opponent No. 3, Insurance Company. As such, he has filed the claim petition.

7. At the time of the accident, the claimant was 23 years of age and was unmarried. He was working with Bora Transport in Pune and earning a salary of Rs. 800/- to 1200/- per month. As he has suffered injuries, he was unable to do any work. Due to an accident, he was admitted for about two months and spent an amount of Rs. 42,000/- to Rs. 50,000/- towards treatment. He suffered a lot and, as such, filed the petition. During the pendency of the petition, he amended it and contended that he was earning between Rs. 2,500/- and Rs. 3,000/- per month.

8. Opponent No.1-truck driver, was deleted. Opponents Nos. 2 and 4, though duly served, failed to appear. Hence, the matter was proceeded against them ex parte. Opponent No. 3- Insurance Company filed the written statement and denied the contents of the petition, stating that the accident occurred due to the rash and negligent driving of the appellant. It also denied the claimant's age and income. It is categorically denied that the claimant has sustained permanent disability. Hence, urged for the dismissal of the claim

petition against it. 10. The opponent No.5 Insurer of the Tempo filed a written statement and contended that it is not liable to pay any compensation for the rash and negligent driving by the appellant himself. It is denied that the appellant has sustained permanent disability, considering his age and income. It is stated that the claim is exorbitant and excessive and therefore, urged for dismissal of the petition against it.

9. Based on the rival pleadings of the parties, the learned tribunal has framed issues. Pursuant to the issues, the claimant examined himself and the cleaner of the tempo and others in support of his claim. He produced and proved the documents and closed his evidence. On the other hand, none of the respondents had adduced any evidence in support of their defence. The learned tribunal, after appreciating the evidence on record, partly allowed the claim petition, holding that respondent Nos. 2 and 3 are jointly and severally liable to pay the compensation to the original claimant. However, it was dismissed against the opponents Nos. 1, 4, and 5. Being dissatisfied with the same, the original claimant-appellant has preferred this appeal.

10. Having considered the rival contentions of the learned advocate for the parties and perusal of the record, the following points arise for determination:

(i) "***whether the appellants are entitled to enhance the compensation ?***

(ii) "***whether any interference is required in the impugned judgment and order ?***.

11. It appears that by order dated 26-09-2001, the appeal is admitted.

12. It is pertinent to note that none of the respondents has challenged the impugned judgment and order, which indicates that they have no grievance about the findings recorded by the learned tribunal. Therefore, they have not preferred any appeal. As such, the findings are binding on them and attain finality, and do not require reconsideration. The original claimant/appellant, who was only dissatisfied with the quantum of the compensation, has preferred this appeal.

13. The learned advocate for the appellants raised three grounds to demonstrate that the appellants are entitled to enhancement of the compensation.

> *i] The learned Judge has erred in applying a multiplier of 16 instead of 17 while determining the compensation.*
> *ii] The learned Judge has not granted compensation for the future prospect.*
> *iii] The learned Judge has also not given compensation under the head of loss of income when the appellant was admitted to the hospital.*

14. To buttress his contention, he has relied on the judgment of the Hon'ble Apex Court in ***Dhannalal Alias Dhanraj (Dead) Thr. LRs Vs***

Nasir Khan and others in Civil Appeal No.2159/2024 dated 26-09-2025 and submitted that in view of the law laid down in the said judgment, the appellants are entitled to get enhanced compensation. Accordingly, urge allowing the appeal.

15. On the other hand, the learned advocate Mr. Deshmukh, for respondent No.3, does not dispute that the learned tribunal has erred in applying the multiplier of 16 instead of 17. Similarly, he does not dispute that, in view of the judgments in National Insurance Co. Ltd. Vs Pranay Sethi and others 1 ***(2017) 16 SCC 680*** and ***Dhannalal*** (supra), the appellants are entitled to compensation under the head of future prospects. But he only contended that the original claimant/appellant died in 2009 and, therefore, he was entitled to the amount under the head of future prospects at 40% only from 1990 to 2009. Similarly, he does not dispute that the appellants are entitled to loss of income during the period when the original claimant was admitted to the hospital. Accordingly, he submitted that an appropriate order be passed.

16. While dealing with the first point raised by the appellants, it appears that in the claim petition/application, the claimant has stated his age as 23 years. However, on perusal of the school-leaving certificate produced on record by him and his admission during his cross-examination, it categorically indicates that

at the time of the accident, he was 27 years old. It also appears that the learned tribunal, while determining the compensation, applied a multiplier of 16. In fact, the claimant was in the age group of 26 to 30 years, and therefore a multiplier of 17 would be applicable, which the learned advocate for respondent No. 3 does not dispute. Consequently, I have no hesitation in applying the multiplier of 17 rather than 16 while determining compensation. Accordingly, I hold that the multiplier of 17 is applicable in the case at hand while determining the compensation.

17. The appellants raised the second issue in respect of the future prospect, for which the learned advocate for the respondents does not dispute that they are entitled to compensation under the head of future prospects in view of the judgment referred above. While considering the above point, it appears that at the time of the accident, the claimant was 27 years old, and the learned tribunal determined the claimant's income as Rs. 15,00/- per month. Similarly, he has suffered 50% permanent disability and therefore, his income of Rs. 750/- is taken while determining the compensation.

18. Notably, as per the mandate laid down in ***Pranay Sethi*** (supra), the claimant is entitled to 40% compensation of the actual income under the head of future prospects, as at the time of the accident, he was below the age of 40 years. Accordingly, I hold that

the appellants are entitled to 40% additional compensation of the actual income of the original claimant under the head of future prospects.

19. The third point raised is that the claimant was admitted to the hospital for two months. His left leg was amputated, and therefore, he was unable to do the work for four months. However, the learned tribunal has neither considered the said facts nor awarded compensation for the loss of income for four months. The claimant's income is Rs. 1,500/- per month, and for the loss of income for four months, the claimant is entitled to compensation of Rs. 6,000/-.

20. Having considered the above discussion, it appears that the learned tribunal, while determining the compensation, has erred in applying the multiplier of 16, as well as erred in not considering the loss of income for the period when he was hospitalised. Similarly, the learned tribunal has erred in not awarding compensation under the head of loss of future prospects, i.e., 40% of the original claimant's actual income.

21. It is not in dispute that the claimant earns Rs. 1,500/- per month, and he has suffered 50% permanent disability; therefore, the learned tribunal has considered his loss of income to the extent of Rs. 750/- per month and applied a multiplier of 16 instead of 17.

Therefore, it would be appropriate to apply the multiplier of 17 to calculate the loss of income on the earning of Rs. 750/- per month i.e. Rs.9,000/- per year and applying the multiplier of 17 the amount comes to **Rs.1,53,000/-** and future loss of income of 40% comes to **Rs.61,200/-** towards future of loss of income.

22. It also appears that the learned tribunal has awarded Rs. 20,000/- towards pain and suffering. I would like to enhance the same to **Rs. 50,000/-.** The rest of the compensation amount awarded under different heads by the learned tribunal is kept as it is.

23. Considering the fact that the claimant was admitted to the hospital for three months, I would like to grant the compensation for loss of income as Rs. 4500/-. I have also gone through the compensation awarded under the other head by the learned tribunal, which I would like to modify as under:

Particulars	**Awarded amount**	**Enhanced amount**
-	Per month 750 (750 x 12 = 9000 per year) 900 x 16 = 1,44,000/-	Per month income 750 (750 x 12= 9000 per year) 9000 x 17 multiplier= **1,53,000/-** 40% of future prospects= **61,200** 1,53,000+61,200 = **2,14,200/-**
Medical treatment	11,000	11,000/-

Pain and suffering	20,000	**50,000**
Attendant	3000	3,000/-
Conveyance	5000	5,000/-
Foot	10,000	10,000/-
Inconvenience	7,000	7,000/-
Total	**2,00,000**	**3,00,200/-**

24. Thus, considering the above discussion and in view of the law laid down in ***Pranay Sethi*** *(supra)* and ***Dhannalal*** *(supra)*, in my view, the claimant/his legal heirs are entitled to enhanced compensation as stated above and to that extend interference is required in the impugned judgment and order, hence ***I answer point Nos. 1 and 2 in the affirmative as discussed above***.

25. It further appears that during the claim, the claimant died and therefore, his LRs are brought on record. Appellant No. 1-A is his wife; Appellants No. 1-B, 1-D are sons; and Appellant No. 1-C is a daughter. Now the children are major. Therefore, in my view, the appellant No.1-A-widow is entitled to 70% of the enhanced amount, and the children are entitled to 10% each of the enhanced compensation.

26. As a result, the appeal is allowed. Consequently, the impugned judgment and order dated 23-12-1999 passed by the learned MACT, Ahmednagar, in MAC Application No.75/1990 is hereby modified to the extent of quantum as under:

27. Respondent Nos. 2 and 3 are jointly and severally liable to pay a sum of Rs. 3,00,200/- (the amount already paid to the appellants is to be adjusted) along with interest @ 12% per annum from the date of application on the said additional enhanced amount. As a sequel, respondents Nos. 2 and 3 are jointly and severally liable to deposit the remaining balance amount/enhanced amount of compensation, along with interest accrued thereon, in this court or before the learned tribunal within eight weeks from the receipt of this order.

28. On depositing the said amount, the concerned officer shall transmit the said amount to the bank accounts of the respective appellants as apportioned above, within 4 weeks on their furnishing their bank account details to the tribunal. No separate application is required to withdraw the said amount.

29. Needless to clarify that the appellants are directed to pay the court fees on an enhanced amount in the court within a period of eight weeks.

30. The first appeal is disposed of. No order as to costs.

31. In view of the disposal of the appeal, pending civil applications, if any, are also disposed of.

[ABHAY J. MANTRI, J.]