IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 349 OF 2024

Narayan Arjun Chaudhari,
Age 48 years, Occ. Nil,
R/o. Shirpur, Tal. Shirpur, Dist. Dhule.
.. Appellant.

Versus

1. Shri Anil Vishwas Patil (Driver)
(the name of respondent No.1 is deleted
as per order below Exh.1 dated 10.08.2017)

2. Ramesh Jaising Girase,
Age Adult, Occ. Owner,
R/o. Shiv Krupa Association Kansad,
Tal. Chauryashi, Dist. Surat (Gujrat)

3. The Regional Manager,
H.D.F.C. ERGO General Insurance Co. Ltd,
4th Floor, Idea City Mall, Kapurbavadi
Junction, Majiwda Naka, Thane 400 607.

. Respondents.

Mr. P.C. Mayure, Advocate for appellant,
Respondent No.1 is deleted
Respondent No.2 served through paper publication
Mr. M.R. Deshmukh, Advocate for respondent No.3.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 24TH MARCH, 2025.
PRONOUNCED ON : 9th APRIL, 2025.

JUDGMENT :-

1. The appellants/original claimants impugn the judgment and

award dated 10.10.2023 passed by Motor Accidents Claim Tribunal, Dhule in M.A.C.P. No. 192 of 2013 and seek enhancement of compensation by present appeal filed under Section 173 of the Motor Vehicles Act.

2. Respondent/claimant instituted M.A.C.P. No. 192 of 2013 claiming compensation of Rs. 40 Lakhs towards the accidental injuries suffered by him in motor vehicular accident . It is contention of the claimant that on 11.11.2012 while he was traveling from Surat towards Shirpur in a Luxury Bus bearing registration No. GJ-05/AZ 2655, the driver of bus was driving in a rash and negligent manner and gave forcible dash to a truck. Claimant suffered multiple injuries in said accident. While he was hospitalized, his right hand was required to be amputated from shoulder. According to claimant, he was running a cloth shop, so also, cultivating agricultural land and was generating income of Rs. 25,000/- p,m. He lost his earning capacity, so also, suffered non pecuniary damages.

3. The claim was contested by insurer of the bus by filing written statement on multiple counts. Issues were framed. The claimant relied upon his own evidence and examined in all four witnesses in his endeavour to prove nature of permanent disablement, loss of earning, medical expenses and cost of artificial limb etc.

4. The Tribunal, on evaluation of evidence, partly allowed the claim and passed an award of Rs. 15,25,124/-.

5. Mr. Mayure, learned advocate appearing for appellant

vehemently submits that claimant suffered 86% disablement as a result of amputation of his right hand from shoulder. He was aged about 38 years and running a cloth business apart from cultivation of agricultural land. The Tribunal erroneously worked out compensation based on notional income of Rs. 8,000/- p.m. when voluminous evidence in the form of income tax returns depicting actual income of deceased was placed on record. He further submits that inadequate compensation is awarded towards non pecuniary heads and future medical expenditure, particularly, towards fixing and maintaining artificial limb.

6. Per contra, Mr. Deshmukh, learned advocate for respondents submits that the claimant continued his business even after accident. Initially, for two years, there was some fall in income, however, later on, that has been gradually increased. Therefore, there was no loss of future earning to the claimant. The Tribunal has rightly assessed such loss notionally @ Rs. 8,000/- p.m. and awarded compensation. Mr. Deshmukh further submits that Tribunal has considered each and every possible head for grant of compensation under pecuniary heads and passed just and proper award, which requires no interference in this appeal.

7. Having considered submissions advanced, and on perusal of the record and proceeding, undisputedly, claimant suffered amputation of his right hand from shoulder as a result of accident. The only issue that is posed in this appeal is, as to assessment of just compensation. The Supreme Court of India in the case of ***Rajkumar vs. Ajaykumar reported in (2011)1 SCC 343, observed in para. 13 as under*** :-

"13.We may now summarise the principles discussed above :

> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
>
> *(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*
>
> *(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."*

8. Similarly, in recent judgment, Supreme Court in the case of ***Sidhram Vs. Divisional Manager, United India Insurance Co.Ltd, (2023) 3 SCC 439*** has laid down certain guidelines for assessment of compensation in case of injury claim arising out of motor vehicle accident, which reads thus :-

> "10. *Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all*

> *cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation."*

9. In the light of aforesaid exposition of law, it is necessary to delve into the evidence on record to find out the actual impact of permanent disablement on the earning of the claimant. The claimant deposed that he was running a cloth shop since before date of accident. He has explained his job profile in conduct of business which includes :

(I) procuring goods for sale from cloth markets at various places for which travelling is required (ii) displaying clothes to customers (iii) cutting the required quantity (iv) cleaning and maintaining of shop (vi) travelling on motorcycle to visit banks, customers etc.

The claimant explained that because of loss of his right hand, he has permanently lost his working capacity and now dependent on others to run his business.

10. The claimant has placed on record income tax returns for the year 2010-11 till 2017-18. Income tax return for the year in which accident occurred i.e. for 2012-13 shows his income as Rs. 3,03,961/-. In that year, claimant suffered accident on 11.11.2012. Naturally his income would for the period till November, 2012 from March, 2012. Thereafter, immediately in next year of the accident, his income was reduced to Rs.1,17,508/-. It is true that later-on, from 2015-16 and 2017-18, there is rise in the income. However, fact remains that claimant has suffered loss of earning as a result of accident.

11. This court finds that if claimant has lost his right hand, the Tribunal ought to have considered loss of earning atleast @ 50% on the basis of earning before the accident. Therefore, the income tax return for the year 2012-13 for Rs. 3,03,591/- could have been taken as basis and loss of earning could have been considered to the extent of 50% . Such loss will continue for entire life of the claimant. This Court, therefore, holds that claimant suffered loss of earning to the tune of Rs. 1,50,000/- per annum as a result of accident.

12. Claimant has brought on record evidence to show that he required artificial limb for correction of his disability. The quotation is at Exhibit 46 which has been proved through evidence of PW-5 vendor. There was no reason to discard aforesaid evidence. This Court, therefore, holds that claimant is entitled for Rs. 4,10,897/- towards cost of artificial limb and its maintenance for entire life.

13. So far as non-pecuniary losses are concerned, claimant is entitled for loss of compensation independently under head of permanent disablement which is now recognized as independent head, as approved by Supreme Court of India in the case of ***S. Manickam Vs. Metropolitan Transport Corporation Limited (2013) 12 SCC 603.***

14. The claimant was aged about 38 years when he lost his right hand from shoulder. Therefore, this Court finds that compensation of Rs. 2 Lakhs needs to be awarded towards permanent disablement. The Tribunal has awarded only Rs. 25,000/- towards pain and suffering, which needs to be enhanced to Rs. 1 Lakh. Similarly, compensation towards mental agony, frustration and loss of expectation of life needs to

be granted to the extent of Rs. 1 Lakh. In the result, this Court holds that claimant is entitled for compensation as stipulated in the tabular form as under :-

Sr.No.	Particulars	Amount
1.	Annual income	Rs. 1,50,000/-
2.	Addition of 40% towards future prospects.1,50,000+60,000 =	Rs. 2,10,000/-
3.	Apply Multiplier of '15' 2,10,000 x 15=	Rs.31,50,000/-
4.	Estimated loss of Future Earning due to P.D.C.@ 50%	Rs.15,75,000/-
4.	Cost of Artificial limb	Rs. 4,10,897/-
5.	Compensation towards permanent disablement	Rs. 2,00,000/-
6.	Compensation for pains, suffering and attendant charges.	Rs. 1,00,000/-
7.	Compensation towards Mental Agony, frustration and loss of expectation of life	Rs. 1,00,000/-
	Total	Rs. 23,85,897/-

15. In the result, appeal is partly allowed with proportionate cost. Claimant is entitled for compensation of Rs.23,85,897/- (Rupees twenty three Lakh eighty five thousand eight hundred ninety seven) inclusive of NFL amount. Respondent Nos. 2 and 3 do pay compensation of Rs. 23,85,897/- to the claimant alongwith interest @ 7% p.a. from the date of accident claim petition till realization of amount. Rest of the award passed by the Tribunal shall mutatis mutandis apply to the modified award. Compensation paid/deposited as per the award of the Tribunal, shall be appropriated. Modified award be drawn accordingly, on payment of deficit court fees, if any.

[S.G. CHAPALGAONKAR, J]

grt/-