IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1848 OF 2017

Shri. Ravindra Murlidhar Attarde
Age - 48 years, Occupation - Business,
R/o 11 Shakuntal, Vivekanand Nagar,
Jilha Peth, Jalgoan, District Jalgaon. … Appellant
[Orig. Claimant]

Versus

1. Shri Shaikh Iqbal Raj Mo. Bagwan
Age 40 years, Occupation Transport Business,
R/o Bagwan Galli, Shahada, Taluka Shahada,
District Nandurbar.

2. The Branch Manager,
The United India Insurance Company Ltd.,
2nd Floor, Mansingh Market, Station Road,
Navi Peth, Jalgaon,
Taluka and District Jalgaon. … Respondents

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Mr. M. M. Bhokrikar, Advocate for the Appellant.
Mr. Amit S. Savale, Advocate for Respondent No.1 **(Absent)**
Mr. S. V. Kulkarni, Advocate for Respondent No.2

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07.07.2025
Pronounced on : 15.07.2025

JUDGMENT :

1. Original claimant in M.A.C.P. No. 489 of 2006 hereby takes exception to judgment and order dated 13.03.2015 passed in said accident claim, partly allowing the claim. Claimant/appellant seeks enhancement.

2. Learned counsel for the appellant would point out that, accident claim compensation was sought by invoking Section 166 of Motor Vehicles Act, 1988 to the tune of Rs.5,00,000/- on account of road traffic accident suffered by claimant on 16.06.2006 while traveling in Maruti Wagon and it being given dash by a speeding truck MH 18/D-7185 coming from opposite direction. He submitted that, appellant was incumbent of the vehicle and he suffered serious fracture injuries to both his right and left knee portion and injury to the ear. He was required to undergo treatment and surgery for reduction of leg and was require to spend total 4,25,000/- for medical treatment. That, at the time of accident, claimant was conducting business and earning Rs.45,000/- which was likely to expand over Rs.1,00,000/- every month, however, because of the accidental disability, he is entitled for just compensation with 24% rate of interest.

3. It is pointed out that, because of the disability, his efficiency to conduct business has considerably come down rendering loss, and was therefore entitled for increase in future income.

4. Finding fault in the impugned judgment, it is submitted that learned tribunal has erred on various counts, like refusing to give compensation on the ground of being beneficiary in earlier insurance claim or reimbursement of earlier medical bills. He expressed dissatisfaction for not granting amount towards future loss of income as well as future prospects. Lastly, case is put forth that meagre compensation is awarded than what was claimed, and hence he urges for enhancement in the quantum and on the point of just compensation primarily seeks reliance on the decisions in ***Md. Sabeer v. Regional Manager, U.P. State Road Transport Corporation*** AIR 2023 SC 186; ***Pappu Deo Yadav v. Naresh Kumar and others*** AIR 2020 SC 4424; ***Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corporation and another*** AIR 1998 SC 3191; judgment of this court in First Appeal No. 1051 of 2022 [***Reliance General Insurance Company Ltd. v. Mr. Aman Sanjay Tak and another*** decided on 12.04.2023]; ***Royal Sundaram Alliance Insurance Co. Ltd. v. Ajit Chandrakant Rakvi and others*** 2019 (3) ABR 620 / 2019 (6) MhLJ 386; ***United India Insurance Co. Ltd. v. Mrs. Anjana w/o Nileshkumar Parmar and another*** 2013 ACJ 1295; ***Vrajesh Navnitlal Desai v. K. Bagyam and another*** 2006 ACJ 65 and ***New India Assurance Company Ltd. v. Bimal Kumar Shah and another*** 2019 ACJ 1532.

5. Above submissions are refuted and countered by learned counsel for respondent no.2, who also placed written notes of arguments opposing the enhanced compensation sought on the ground of non joinder of necessary parties, i.e. car owner and its insurance company. That, two vehicles being colliding, contributory negligence ought to have been considered. Resisting the quantum on disability and injury, it is pointed out that there is no evidence suggesting loss of income, rather, there was rise and increase in the same and as such, no financial loss is suffered by the claimant. Thus, for want of merits, appeal is sought to be dismissed by submitting that, even otherwise tribunal has granted compensation on higher side than that claimant was entitled to.

6. Thus, sum and substance of the case set up by the claimant is that, he was traveling in Maruti Wagon on 16.06.2006 which met with an accident on account of dash given by truck. According to him, he suffered serious fracture injuries to the portion below both, his right and left knee, and was required to be operated and his legs were required to be plastered. He also suffered injury to his ear. He suffered permanent disability and incurred medical expenses with special diet, transport worth Rs.3,75,000/-, though total claim set up was of 4,25,000/-. His earning capacity from the business is affected

and thus he sought compensation.

7. Evidence of claimant is at Exhibit 28. While under cross at the hands of respondent no.2, he has admitted about he to be beneficiary of amount of Rs.1,50,000/- from Oriental Insurance Company and that he has not annexed to the complaint the medical bills which were submitted by him to the Oriental Insurance Company. In appeal, there is no serious challenge about claimant to be injured in accident due to rash and negligent act of driver. However, there is serious contest on income and disability. CW2 is the doctor, namely Pradipkumar Jaiswal, who allegedly examined and treated claimant at Civil Hospital Jalgaon and had also issued certificate. Evidence of this witness in translated form is as under :

> "After acquiring MBBS and D.Orthopaedics, he worked at Civil Hospital, Jalgaon and was a Member of the Disability Board. Claimant Ravindra Murlidhar Attarde had approached him on 22.08.2008 for issuance of disability certificate on account of meeting road traffic accident and suffering injury to right knee and left ankle and knee. He further deposed that said patient was treated and operated by Dr. Choudhary of Akola. On examining the X-ray, this witness claims that he issued disability certificate to the extent of 37% permanent disability and he identified the said certificate at Exhibit 57.

While under cross, he answered that, patient came to Civil Hospital only on 22.08.2008 and thereafter never approached Civil Hospital. He admitted that he was not carrying record of Civil Hospital and that, which body part is disabled is not reflected in Exhibit 57. He denied that patient had not suffered any disability and that he can work as usual. He admitted that, injury has not affected mental capacity of patient.

8. Thus, it transpires that claimant suffered accident on 16.06.2006 and though he claims to have been treated and operated for fracture injury by Dr. Choudhary, said doctor is not examined. Paragraph 18 of the judgment shows that commission was appointed but said doctor did not adduce his evidence. Claimant seems to have approached Civil Hospital directly on 22.08.2008 i.e. after one year and two months of alleged accident and PW2 has only assessed disability on the strength of papers produced before him.

9. As stated above, claimant has admitted in cross about he receiving Rs.1,50,000/- from Oriental Insurance Company and he also admitted that he has not mentioned details of medical bills submitted to Oriental Insurance Company, nor proved it and hence learned

tribunal has refused to consider medical expenses, regarding which there is now challenge in the appeal. Similarly, grievance of claimant is that he was conducting business and due to permanent disability, he is unable to conduct the business and is rather suffering loss. However, in para 21, as pointed out, after discussing income tax returns for the year 2005-2006, 2006-2007 and 2007-2008, learned tribunal has recorded that there is rise in income rather than loss. In this regard learned counsel for claimant has placed reliance on the judgment of Hon'ble Apex Court in ***Mohd. Sabeer*** (supra) wherein it has been held that, even if there is rise in income, victim of accident is entitled for just compensation.

10. Similarly, learned tribunal seems to have taken the admission of claimant into consideration regarding he to be beneficiary of insurance through Oriental Insurance Company, and has thereby refused to give compensation and has granted lump sum amount of Rs.1,00,000/-. Learned counsel for appellant/claimant has also placed on record that even under such circumstances, when there is previous contractual liability with other insurer and even if it is satisfied, victim of accident is entitled to receive compensation from the offending vehicle and its insurer. Reliance is placed on the judgments of the Hon'ble Apex Court.

11. Therefore, after complete re-appreciation and re-analysis, in the considered opinion of this Court, claimant has demonstrated that he was conducting business and that was his source of income. He had suffered permanent disability to the extent of 37%. In view of law dealt in above judgment, though there is rise in income, the applicant is entitled for just compensation. Therefore, claimant is entitled for enhanced compensation for loss of income due to permanent disability to further extent of Rs.50,000/-. Similarly, applicant is also entitled for medical expenses for the treatment as apparently, he was required to be operated due to fracture injuries. Considering the location of fracture and surgery, appellant is entitled for further Rs.30,000/- for surgical charges and Rs.10,000/- for medical expenses.

12. Though learned counsel for the appellant has sought reliance on various judgments of the Hon'ble Supreme Court, those cases are distinct and distinguishable as, in those cases, nature of injury was by way of amputations and disability to walk permanently due to neurological problem respectively. Here it is not so. Therefore, said citations cannot be taken recourse to. In view of the above, following order is passed :

ORDER

I. The First Appeal is partly allowed with proportionate costs.

II. The judgment and award passed by the Member, M.A.C.T. Jalgaon dated 13.03.2015 in M.A.C.P. No. 489 of 2006 is modified to the extent that, appellant/claimant is held entitled for enhanced compensation of Rs.90,000/- along with interest @7.5% p.a. from the date of filing claim petition till its realization.

III. Rest of the award is maintained.

IV. Appellant shall pay court fees on the enhanced compensation.

V. Respondent No.2 Insurance Company to pay the enhanced compensation within a period of 12 weeks from the date of uploading of this order.

VI. On depositing the amount by the respondent-insurance company, appellant-claimant is entitled to withdraw the same.

VII. Modified award be prepared.

[ABHAY S. WAGHWASE, J.]

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