IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

977 FIRST APPEAL NO. 2824 OF 2009

Altaf Sayyed Kadar
... APPELLANT

VERSUS

1. Nandaram s/o Radhaji Beard
Age : Major, Occu.: Business
R/o At Post Darewadi, Tq. & Dist., Ahmednagar

2. National Insurance Company Ltd.,
Through Divisional Manager,
Raj Chambers, Kothala, Dist. Ahmednagar ...RESPONDENTS

...

Mr. U. U. Wagh h/f Mr. V. B. Anjanwatikar, Advocate for the Appellant
Mr. V. N. Upadhye, Advocate for Respondent No.2

CORAM : R. M. JOSHI, J.
DATE : 16th OCTOBER, 2025

JUDGMENT :-

1. This Appeal under Section 173 of the Motor Vehicle Act taking exception to the judgment and award dated 12/06/2009 passed in MACP No. 344/2004 and seeking enhancement of the compensation.

2. Parties are referred to as 'claimant', 'owner of the vehicle' and 'insurer' for the sake of brevity.

3. Before the Tribunal it was the case of the claimant that he was aged about 30 years working as a Marine Engineer in Sec Rock Consultancy Services earning 1500/-$ per month. He claimed that on

09/06/2004 at about 9.30 p.m he was standing to the left side of the Nagar Solapur road along with his friend a three wheeler auto rickshaw bearing No. MH-16-B-3970 came from Ahmednagar side in high speed and gave dash to the claimant and his friend. As a result of the same he sustained injury to his right leg fracture of shaft femur, right fracture patella and CLW over scalp and face. A crime came to be registered vide CR No. 57/2014 against the driver of auto rickshaw. Claimant was admitted in the Deshpande Hospital at Ahmednagar and was treated till 25/06/2004. He claims to have incurred expenses of Rs.1,50,000/- on treatment, conveyance, special diet etc. He claims that on account of accidental injuries he suffered 60% permanent disability and hence he claims lost of income. On differed heads a total amount of compensation of Rs.5 lakhs was sought.

4. The owner of the offending vehicle failed to remain present before the Tribunal and the petition proceeded ex-parte against him. Insurer filed written statement at Exhibit 16 denying any negligence on the part of the driver of the auto rickshaw in occurrence of the accident. The insurer also denied age, injuries disability, loss of earning etc. as claimed by the claimant. It is also claimed by the insurer that there is a breach of the condition of the policy and as such the insurer is not liable to make payment of compensation.

5. Claimant examined himself at Exhibit 31 and also led

evidence of Dr. Deshpande at Exhibit 34. Apart from the evidence of the claimant, he placed reliance on the police papers which include FIR, spot panchnama etc. He also led evidence on the point of income. Dr. Deshpande was examined in order to prove the medical treatment so also the permanent disability.

6. The insurer did not lead any evidence before the Tribunal.

7. Tribunal passed impugned order awarding compensation of Rs.4,15,000/- along with the interest 6% per annum from the date of application till date of realization out of which Rs.2,50,000/- was towards compensation on account of disability.

8. Learned Counsel for the claimant has grievance in respect of the determination of the amount of compensation on lump sum basis by the Tribunal. It is his submission that the claimant has proved his age and income and hence by applying the appropriate multiplier, the amount of compensation ought to have been determined by the Tribunal and not on lump sum basis. It is his submission that age of the claimant was 31 years and as such multiplier of 16 would apply to the present case. It is his submission that there is sufficient evidence on record to indicate the income of the claimant at the relevant time to be 1500$ per month. According to him since claimant was a Marine Engineer he was required more than normal fitness for his job and thus there is 100%

loss of earning capacity. It is his submission by relying upon the judgment in case of ***National Insurance Company Limited Versus Pranay Sethi and Others, (2017) 16 SCC 680*** to contend that the future prospect needs to be considered and in case of the person below age of 40 the future prospect should be considered @ 50%. It is his submission that the future prospect are required to be taken into consideration even in case of injury claimed as held by the Hon'ble Supreme Court in case of ***Pappu Deo Yadav Vs. Naresh Kumar and Others, 2020 SCC OnLine SC 752***. He also placed reliance on the judgment in case of ***Anant Son of Sidheshwar Dukre Vs. Pratap Son of Zhampannappa Lamzane and Another, (2018) 9 SCC 450***. In so far as the interest is concerned, learned Counsel for the Appellant insists upon the direction for payment of interest from the date of award itself.

9. Learned Counsel for the Respondent opposed the Appeal by contending that Tribunal has recorded finding for not accepting the claim of the claimant of receiving 1500$ per month. It is his submission that since admittedly the initial appointment of claimant was only for a period of 11 months, he could not have been considered to be in permanent employment. It is his submission that in such circumstances, it would be appropriate to grant any future prospect as sought by the claimant. Without prejudice to his submission he argued that in case this Court awards any enhancement of the compensation on the ground

of future prospect, no interest would be entitled by the claimant on the said amount as the said amount is to be paid on the basis of the change in position of law now.

10. There is no serious dispute made by the parties with regard to the occurrence of the accident on 09/06/2004. In any case claimant by examining himself has described the manner in which the accident has occurred. He is victim and hence witness to the accident. His version gets supported from the police papers more particularly the first information report and spot panchnama. There is no contrary evidence led by the owner or insurer to hold that the Petitioner has contributed in the occurrence of the accident in any manner whatsoever. On the basis of evidence on record it is held that the driver of the offending vehicle was negligent in causing of the said accident.

11. Claimant examined Dr. Deshpande at Exhibit 34 who deposed about the treatment of the claimant in Deshpande hospital. He proved discharge chard (Exhibit 39), so also disability certificate (Exhibit 47). In so far as the determination of disability to the extent of 40% by the Tribunal is concerned, at the outset it needs to be recorded that it is now claim of the claimant that he sustained 100% permanent disability. However, in claim Petition it was claimed to the extent of 60%. The learned Tribunal refused to accept it in entirety by citing the schedule injuries prescribed under the Workman Compensation Act. Having

regard to the nature of injuries caused to the claimant so also his evidence that he was not permanently prevented from joining the employment, as it appears from evidence of claimant himself, this Court finds no reason to cause interference in the permanent disability of the claimant to be held at 40%.

12. The Tribunal has not determined the compensation on the basis of the formula provided under the Act. It is necessary for the Tribunal to arrive at the conclusion about the income of the injured and then to apply appropriate multiplier. Herein this case, evidence of the claimant indicates that he was a Marine Engineer and was appointed initially for a period of 11 months. He specifically further claims in his chief examination about subsequent offer of employment. Perusal of the cross-examination does not indicate that the insurer was able to elicit anything on record to discard his evidence. Though the initial appointment was for 11 months, it is pertinent to note that the qualification and the nature of work done by the claimant is not in dispute so also subsequent offer of employment. Having regard to the said fact, this Court finds no hesitation to hold that the claimant has succeeded in proving his income @ 1500$ per month.

13. The judgment in case of ***Pranay Sethi and Others*** and ***Pappu Deo Yadav*** (supra) indicate that the future prospects are required to be considered while determining the amount of compensation payable to

the claimant even in injury claim. Since the age of the claimant was below 40 years, 50% future loss of income needs to be considered in addition. It needs to be recorded that at the time of filing of the claim the rate of dollar against rupees was 1:45.32. Both sides do not dispute the said factual position. As a result of this, the amount of enhance compensation also would be calculated at then rate and not rate prevailing as of today. As a result of above discussion, Appeal is partly allowed. Impugned order is modified in following terms.

Particulars	Amount
Salary 1500$ per months X 12 months	18000$
18000 x 50% future prospects	9000$
27000 $ x 40% disability	10800$
10800 x 16 multiplier	172800$
172800 X Rs.45.32	Rs.78,31,296.00

14. In case the enhance compensation is not paid within a period of three months from today, the said compensation shall carry interest @ 7% per annum till realization.

15. On deposit of amount by the insurer in this Court, Appellant /claimant is permitted to withdraw the same.

(R. M. JOSHI, J.)

ssp