IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2365 OF 2018

Royal Sundaram General Insurance Co. Ltd., ... **Appellant**
Subramaniam Building, II Floor, No.1 Club
House Road, Annasalai, Chennai-600 002
Through its Authorized Officer

VERSUS

1. Sangharsh s/o Suresh Sonawane
Age 27 years, Occu: Private Service, at
present Nil, R/o Tanhaji Chowk,
Jawahar Colony, Aurangabad

2. Sopan s/o Bhagwanrao Bhosale,
Age Major, Occu: Business,
R/o RX 6/4, House NO.8, Swami Samarth
Housing Society, Near Mohatadevi Temple,
Bajaj Nagar, Aurangabad

3. Sunil s/o Harischandra Athawale,
Age: Major, Occu: Driver
R/o Sansar Nagar, Kranti Chowk,
Aurangabad

4. United India Insurance Co. Ltd.,
Through its Branch Managar, Aurangabad

5. Mahadu s/o Dagduji Paghare,
Age: Major, Occu: Business,
R/o A-18-34/P, Tulsi Saujanya Nagar,
Behind Kushalnagar, Darga Road,
Aurangabad.

6. Anand s/o Mahaduji Pagare
Age Major: Occu: Business
R/o As above.

Mr. S. S. Wagh h/for Mr. A. S. Deshpande, Advocate for the Appellant
Mr. P. C. Mayure, Advocate for Respondent No.1,
Mr. A. A. Puranik, Advocate for Respondent No.2
Mr. A. B. Chitne, Advocate for Respondent No.4
Mr. A. S. Shejwal, Advocate for Respondent Nos. 5 and 6

AND

FIRST APPEAL NO. 3183 OF 2022

Sangharsh s/o Suresh Sonawane ... **Appellant**
Age 29 years, Occu: NIL,
R/o Tanhaji Chowk,
Jawahar Colony, Aurangabad

VERSUS

1. Royal Sundaram General Insurance Co. Ltd.,
   Through its Branch Manager, Jalna Road,
   Aurangabad
2. Sopan s/o Bhagwanrao Bhosale,
   Age Major, Occu: Business,
   R/o Makni Tq. Ahmedpur Dist. Latur
3. Sunil s/o Harischandra Athawale,
   Age: Major, Occu: Driver
   R/o Sansar Nagar, Kranti Chowk,
   Aurangabad
4. United India Insurance Co. Ltd.,
   Through its Branch Managar, Aurangabad
5. Mahadu s/o Dagduji Paghare,
   Age: Major, Occu: Business,
   R/o A-18-34/P, Tulsi Saujanya Nagar,
   Behind Kushalnagar, Darga Road,
   Aurangabad.
6. Anand s/o Mahaduji Pagare
   Age Major: Occu: Business
   R/o As above.

Mr. P. C. Mayure, Advocate for the Appellant,
Mr. S. S. Wagh h/for Mr. A. S. Deshpande, Adv. for Respondent No.1.

Mr. A. A. Puranik, Advocate for Respondent No.2
Mr. A. B. Chitne, Advocate for Respondent No.4
Mr. A. S. Shejwal, Advocate for Respondent Nos. 5 and 6

CORAM : Y. G. KHOBRAGADE, J.
DATE : 03.10.2025

ORDER:-

1. In First Appeal No. 2365 of 2018 the appellant Insurance company takes exception to the Judgment and Award dated 30.10.2017 passed in passed in MACP No.57 of 2016 by the learned Motor Accident Claim Tribunal, Aurangabad, whereby claim petition filed by the Respondent No. 1/Original claimant is allowed. The present appellant/ insurance Company and Owner of the vehicle to jointly and severally directed to pay compensation amount of Rs.8,86,050 with interest @ 9% from the date of filing of the clam petition i.e. 13.01.2016 till its realization including NFL amount.

2. In First Appeal No. 3183 of 2022, the appellant/original claimant takes exception to the Judgment and Award dated 30.10.2017 passed by the learned Motor Accident Claim Tribunal, Aurangabad, in MACP No.57 of 2016 to the extent of denial of compensation in head of 40% future prospects.

3. Since both these appeals are arising out of the Judgment and Award dated 30.10.2017, therefore both these appeals are taken together. The

Parties in both these appeals hereinafter will be referred in their original capacity as claimant and Respondents.

4. The learned counsel appearing for the Insurance company vehemently canvased that as per FIR, the accident was occurred on 11.09.2015 at about 2.00 a.m., when the claimant was proceeding in his Tata Safari Car bearing registration No. Mh-20-DJ-3745 and when he reached at Beed bypass Road, opposite Hotel Master Cool, at that time the Tractor bearing No. MH-24-AG-1204 attach with Trolley No. MH-24-E-4467 gave dash to his Tata Safari car, due to which, the claimant sustained severe injuries. However, while lodging the FIR, the claimant disclosed about giving dash to his car by the Red colour Tractor having no number and after two month from the date of accident the claimant gave description of tractor's and trolley colour as Blue instead of Red. Therefore, it is submitted that, the Tractor bearing No. MH-24-AG-1204 and Trolley No. MH-24-E-4467 was not involved in the accident. Therefore, the Respondent no. 1 Insurance company is not liable to pay any compensation.

5. It is further canvass that, the Respondent no. 2 owner of the offending vehicle filed written statement and denied involvement of the Tractor bearing No. MH-24-AG-1204 and Trolley No. MH-24-E-4467. The claimant had described the tractor and trolley's colour as red but the

after two month from the accident, the complainant described colour of tractor was blue . Therefore, the claimant fail to prove involvement of said tractor in the accident, hence, the learned Member, MACT wrongly allowed the claim petition, hence, prayed for quash and set aside the impugned judgment and award.

6. It is further canvass on behalf of the Respondent no. 1 Insurance company that, the Respondent no. 2 owner of the tractor and trolley filed Written Statement 25 and denied claim of the petition. So also, the Respondent no. 1 has filed Evidence Affidavit Exh. 52 and stated that, the Tractor bearing No. MH-24-AG-1204 and Trolley No. MH-24-E-4467 was not involved in the said accident. Therefore, the learned Member, MACT, out not to have allow the claim petition, hence, impugned judgment and award is illegal bad in law.

7. The learned counsel appearing for the appellant insurance company further canvassed that the learned trial court fail to consider the defence of Respondent No.2-owner of the vehicle and only considered the FIR registered with the police station. The recital of FIR does not prove that, Tractor bearing No. MH-24-AG-1204 and Trolley No. MH-24-E-4467 was involved in the said accident. However, the learned Tribunal illegally held that, the tractor bearing No. MH-24-AG-1204 and Trolley No. MH-24-E-4467 owned by Respondent No.2 was involved in the accident.

Therefore, the findings of the learned trial court are illegal and perverse and need to be quashed and set aside.

8. Learned counsel for the Respondent no. 1 present Appellant Insurance company further canvassed that, the learned tribunal wrongly considered Rs.4500/- per month as notional income of the appellant and granted excess compensation of Rs.8,86,050/- without applying proper multiplier and other heads. Therefore, the impugned judgment and award is liable to be quashed and set aside.

9. Per contra the learned counsel appearing for the present Respondent/ claimant canvassed that, very meager amount of notional income has been considered by the learned tribunal though at the relevant time, notional income was more than Rs.4500/-. Therefore, the impugned judgment and award needs to be quashed and set aside to the extent of quantum of compensation and it is liable to be enhanced.

10. The learned counsel for the claimant further canvassed that while determining the compensation of Rs.8,86,050/-, the learned tribunal fail to consider 40% future prospects of the claimant as per the ratio laid down in case of **National Insurance Company Ltd. Vs. Pranay Sethi and others, AIR 2017 SC 5157,** hence. prayed for modification of the award to the extension of quantum of compensation by addition of 40% amount

towards future prospects.

11. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. It is not in dispute that, on 11.09.2015 at about 2.00 a.m., the claimant was proceeding in his Tata Safari Car bearing registration No. Mh-20-DJ-3745 and when he reached near Hotel Master Cool, at that time, the offending vehicle Ttractor bearing No. MH-24-AG-1204 with Trolley No. MH-24-E-4467 gave dash to Tata Safari car of the claimant. It is a matter of record that the claimant was hospitalized at Kamalnayan Bajaj Hospital, for medical treatment from 11.09.2015 to 21.09.2015 and he incurred Rs. 1,00,000/- towards medical expenses. As per the Disability Certificate, the claimant suffered 80% disability due to amputation of his left upper limb as it was completely crushed in the accident. Though the respondent/claimant claimed that, he was the Manager in a Hotel and he was drawing Rs.15,000/- per month, however, the Claimant fail to produce any documentary evidence about his monthly income. Therefore, the learned Tribunal considered the notional income of Rs.4500/- per month. At the time of accident, the claimant was 26 years old, therefore, as per table prescribed in case of **Sarla Verma,** the learned Tribunal applied multiplier 17 and determined compensation as Rs. 4,500 X 12 X (multiplied)17= 9,18,000/-. Since the claimant sustained 80% disability/loss of earning

capacity, therefore, the learned trial court ascertained the compensation as under:

1)	Loss of income	Rs.7,34,400/-
2)	Loss of income during period of treatment i.e. 11 days.	Rs. 1650
3)	Towards pain and suffering	Rs.25,000/-
4)	Towards medical expenses	Rs.1,00,000/-
5)	Loss of amenities, happiness and enjoyment of life	Rs.25,000
	Total :	**Rs.8,86,050/-**

12. Therefore, it appears that, the learned Member, MACT failed to consider loss of future prospect. In case of **National Insurance Company Ltd. Vs. Pranay Sethi (supra),** 40% compensation requires to be granted towards future prospects. At the time of accident, the claimant was 26 years old. Therefore, the claimant is entitled for 40% future prospects. However, the learned trial court failed to consider 40% future prospects. Therefore, the impugned award needs to be modified and the appeal filed by the claimant needs to allowed to the extent of grant of 40% future prospects, hence, the First Appeal No. 3183 of 2022 needs to granted by modifying the impugned Judgment and award to the extent of addition of 40% of future prospect.

13. Needless to say that the Insurance Company filed written statement

and claimed that, the respondent No.2- owner of the Tractor and Trolley filed W.S., and denied about the involvement of the tractor and trolley in the accident. Therefore, burden was lies upon the claimant to prove about involvement of the said offending vehicle in accident. Needless to say that, the Respondent no. 2/Owner of offending vehicle filed Evidence Affidavit at Exh. 52 and reiterated the fact that, while lodging the FIR, the claimant had described without number and red colour Tractor and after two months the claimant described blue colour of the offending vehicle/Tractor. The Respondent no. 2 Owner further stated the police released said tractor on bond in his favour after obtaining his false signature no cross examination was conducted on behalf of the Respondent no. 1 Insurance Company. So also, the Respondent no. 2 owner of the Tractor has not lodged any report when his bogus signature was obtained on the Bond. The Respondent no. 2 owner of the tractor admitted in his cross examination of he is owner of Tractor MH-24-AG-1204 and Trolley MH-24-E-4467 and he had obtained said vehicle on supurtnama. It is further submitted that, though the Respondent no. 1 Insurance company filed written statement and denied the claim of the Respondent claimant, however, no witness was examined on behalf of the Respondent no. 1 Insurance company to prove its defence, hence, defence of the Respondent no. 1 can not said to be proved substantially. Therefore, I do not find that, the findings recorded by the learned Member, MACT are perverse, bad in law, hence, appeal filed by the Respondent no. 1 Insurance company has no merit and it is liable to be dismissed.

14. In view of above discussion in foregoing paras, First Appeal No. 3183 of 2022, filed by the the claimant needs to be allowed and the impugned judgment award dated 30.10.2017 passed in passed in MACP No.57 of 2016 by the learned Motor Accident Claim Tribunal, Aurangabad needs to be modified to the extent of addition of 40% future prospects due to 80% disability/loss of income suffered by the claimant and he was 26 years old at the time of accident. The learned tribunal has considered loss of income to the tune of Rs.7,34,400/-. Therefore, addition of 40% towards future prospects (i.e. 7,34,400 x 40%) comes to Rs.2,93,760/-. As such the claimant is entitled for the compensation amount as follows:

Sr. No.	Particulars of heads	Amount (Rs.)
1)	Loss of income	734400.00
2)	Addition of 40% towards future prospects ((i.e. 7,34,400 x 40%)	293760.00
3)	Loss of income during period of treatment i.e. 11 days.	1650.00
4)	Towards pain and suffering	25000.00
5)	Towards medical expenses	100000.00
	Loss of amenities, happiness and enjoyment of life	25000.00
	Total :	**1179810.00**

15. In view of the above, I pass the following Order.

O R D E R

(i) First Appeal No. 2365 of 2018, filed by the ori. Respondent no. 1 Insurance company is hereby dismissed.

(ii) First Appeal No. 3183 of 2022 filed by the ori. claimant is partly allowed with proportionate cost.

(ii) The Judgment and Award dated 30.10.2017 passed in passed in MACP No.57 of 2016 by the learned Motor Accident Claim Tribunal, Aurangabad is hereby modified and additional amount under the component of future prospects @ 40% is granted to the claimant which comes to Rs.2,93,760/-.

(iii) The Ori. Respondent no. 1 Insurance Company i.e. Royal Sundaram General Insurance Co. Ltd. is hereby directed to additionally pay Rs.2,93,760/- to the claimant with interest @ 9% per annum from the date of filing of the claim petition i..e. 13.01.2016 till its realization, within eight weeks from today.

(vi) The amount if any already paid or deposited in pursuance of the award passed by the Tribunal shall be appropriated.

(v) The claimant is at liberty to withdraw the amount, if any, already deposited by the Insurance company.

(vii) Modified award be drawn Accordingly.

(Y. G. KHOBRAGADE, J.)

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