

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.733 OF 2024

1) Vinayak s/o Bapu Ghegade Died
Through L.Rs.

1A) Pushpa wd/o Vinayak Ghegade
Age: 60 years, Occu. Agril.,

1B) Kranti w/o Sandip Thete,
Age: 40 years, Occu. Agril.

1C) Kirti w/o Kalpesh Thorat
Age: 38 years, Occu. Agril.

1D) Priti w/o Ganesh Thorat
Age: 36 years, Occu. Agril.

1E) Akshay s/o Vinayak Ghegade
Age: 34 years, Occu. Agril.,

All R/o Village Math,
Tq. Shrigonda, Dist. Ahmednagar.

..Appellant

VERSUS

1) Shivaji s/o Sadashiv Bandal
Age : 47 years, Occu. Business,
R/o. Karde, Taluka Shirur,
District – Pune.

2) Manager,
Iffco Tokio General Insurance
Co. Ltd., Branch Office Kapil Tower,
A-301, 45 Ambedkar Road,
Naer R.T.O. Office Pune – 411001.

..Respondents

...
Mr. D.R. Jaybhar, Advocate for Appellant.
Mr. S.S. Rathi, Advocate for Respondent No.2.

...
CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : APRIL 23, 2025
PRONOUNCED ON : MAY 08, 2025

JUDGMENT :

1. The appellant/original claimant aggrieved by quantum of compensation awarded by Tribunal at Ahmednagar, in Motor Accident Claim Petition No.517 of 2008, vide judgment and award dated 22.02.2012, filed this appeal under Section 173 of Motor Vehicles Act seeks enhancement of compensation.

The claimant instituted a claim under Section 166 of Motor Vehicles Act seeking compensation of Rs.14,00,000/- contending that on 22.05.2008, while he was proceeding on motorcycle, a tractor bearing Registration No. MH-12-EB-2204 came from opposite direction and collided against his motorcycle. In result, claimant sustained serious injuries on his head, face, right hand, right leg, right eye. He was shifted to hospital and treated as indoor patient from 22.05.2008 to 05.06.2008. During this period, he was operated on his right leg and right eye.

2. At the time of accident, claimant was in service with MSRTC as driver and earning salary of Rs.6,000/- per month. However, since he suffered permanent disablement of 25%, he was discharged from service being incapable to perform his duty as driver. The claimant further contends that he was cultivating his agricultural land and generating income, which has been stopped due to physical incapability. The respondents i.e. owner and insurer of tractor refuted the claim raising multiple defenses. The Tribunal after evaluation of

evidence and hearing the parties, passed an award, granting compensation of Rs.7,15,644/- with accrued interest @ 7.5% p.a. in favor of claimant.

3. Aggrieved claimant filed present appeal seeking further enhancement of compensation.

4. Mr. Jaybhar, learned advocate appearing for appellant vehemently submits that the Tribunal was under obligation to pass an award of just compensation in terms of Section 168 of Motor Vehicles Act. He would submit that claimant has been discharged from service since he was medically unfit to continue job as driver. As such, he suffered 100% loss of earning capacity. However, the Tribunal erroneously assumed meager 25% loss of earning commensurate to percentage of permanent disablement, which is inconsistent with method of assessment of compensation in injury cases. He would further submit that claimant was aged about 46 years at the time of accident. He was permanent employee of MSRTC. hence, 30% addition ought to have been made towards loss of future prospects. According to him, paltry sum is awarded towards non-pecuniary heads. In support of his contentions, he relies upon the judgments of Hon'ble Supreme Court of India in cases of *Jakir Hussein Vs. Sabir and Ors*¹, *Sarnam Singh Vs. Shriram General Insurance Co. Ltd and Others*², *Sidram Vs. Divisional Manager, United India Insurance Co.*

1 AIR 2015 SC (Supp) 446

2 AIR 2023 SC 3601

*Ltd and Another*³, *Mona Baghel and Ors Vs. Sajjan Singh Yadav and Ors*⁴ and *Ramla and Ors Vs. National Insurance Company Limited and Ors*⁵.

5. Per contra, Mr. S.S. Rathi, learned advocate appearing for respondent no.2/insurance company would submit that there is no scope for grant of enhanced compensation as claimed in this appeal. According to him, claimant pleaded his salary as Rs.6,000/- per month at the time of accident. However, the Tribunal assumed same @ Rs.10,000/- per month on the basis of last drawn salary at the time of discharge of claimant from service in the year 2010. According to Mr. Rathi, claimant had suffered fracture to his leg; however, during cross-examination, he admitted that he can walk without crutches or support. Therefore, Tribunal could not have assumed loss of agricultural income. Claimant can continue to supervise farming as before without any difficulty. Further, looking to nature of disability, claimant can continue his earning by way of alternate employment. Mr. Rathi would point out that claimant has not canceled his driving license and same was still in force on the date of cross-examination, therefore, this is not fit case where compensation can be worked out by assuming 100% loss of earning to the claimant. He would therefore justify the award as passed by the Tribunal and urge to dismiss the appeal.

3 AIR Online 2022 SC 890

4 AIR Online 2022 SC 872

5 AIR 2019 SC 404

6. Having considered the submissions advanced, limited issue as to justness of compensation in facts and circumstances present case is raised in this appeal. Admittedly, claimant suffered injury in motor vehicular accident dated 22.05.2008. The major injury was fracture to right leg, which was operated and nailing was done. He had pains and stiffness in right leg. According to claimant, he cannot walk long distance. During cross-examination, he admitted that he can walk without support. However, fact remains that as per copy of service book placed on record, claimant has been discharged from services with effect from 06.02.2010 for the reason of incapability to perform his job. In light of aforesaid admitted facts, observations of Supreme Court in case of ***Raj Kumar Vs. Ajay Kumar and Another***⁶ in paragraph nos.12 and 13 are relevant which reads thus :

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

7. Applying the aforesaid exposition of law, in the facts of present case, it can be observed that although claimant has suffered permanent disablement of 25% completely lost his earning out of employment as driver with MSRTC due to discharge from service.

8. In case of Sarnam Singh (Supra), claimant, who was employed as gunman in a hotel, suffered amputation of his right leg in road accident. Looking to his incapability to work as gunman, he

was removed from service. In this background, the question as to loss of earning capacity was before Supreme Court. The medical practitioner had quantified the permanent disablement at 85%. Taking the same as loss of earning, the Tribunal had passed the award. However, the High Court in appeal reduced the compensation taking notional loss of earning @ 80%. In this background, the Hon'ble Supreme Court observed that any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect.

9. In yet another case of Jakir Hussein (Supra), claimant, who was working as driver suffered 55% permanent disablement. The Hon'ble Supreme Court observed that since he became incapable of performing his duty as driver, loss of earning has to be assessed as 100%. It is therefore trite that while determining the just compensation, the Courts are required to see that the injured victim of accident is compensated to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a

result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

10. In present case, claimant is entitled to be compensated for 100% loss of earning suffered by him as a result of accident at the same time it cannot be disputed that the claimant has suffered injury of fracture to his leg and nothing more. True, that it incapacitated him to pursue job as a driver, but that itself would not be a hurdle for him to either supervise his agricultural land or even engage in suitable employment to generate income. The Claimant has pleaded his income as Rs.6,000/- per month in claim petition. However he produced copy of his service book and salary certificate depicting salary at the time of his discharge from service in year 2010. That shows his salary was approximately Rs.10,000/- per month. Therefore, taking pleadings in the claim petition as it is and applying

principles of assessment of compensation this Court finds it appropriate to consider loss of earning to the claimant @ Rs.10,000/- per month.

11. The claimant was aged about 46 years at the time of accident. Therefore, multiplier of 13 would be applicable. An addition of 25% is admissible towards future prospects. Since the claimant can continue to supervise his agricultural land, this Court holds that he is not entitled for compensation for loss of supervision charges as considered by the Tribunal. Similarly, since compensation is worked out applying multiplier method, independent compensation for loss of salary for the period of one year of leave need not granted. However, claimant would be entitled for compensation towards pains and sufferings, special diet, transportation expenses, attendant charges as awarded by Tribunal. In result, the compensation can be worked out as under :

Sr No.	Heads	Amount (Rs.)
1.	Annual Loss of Earning Rs. 10,000 x 12	Rs.1,20,000/-
2.	Addition of 25 % towards future prospects Rs. 1,20,000 + Rs. 30,000=	Rs. 1,50,000/-
3.	Future Loss of Earning after applying multiplier of '13' Rs. 1,50,000 x 13 =	Rs. 19,50,000/-
4.	Pains and Suffering	Rs. 10,000/-
5.	Special Diet	Rs. 10,000/-
6.	Transportation Expenses	Rs. 5000/-

7.	Attendant Charges	Rs. 4500/-
8.	Total	Rs. 19,79,500/-

12. In result, first appeal is partly allowed.

13. The Appellant/claimant is held entitled for total compensation of Rs. 19,79,500/- along with interest @ 6 % p.a. from the date of filing of claim petition till realization of amount from respondent nos.1 and 2.

14. The amount paid or deposited as per award of Tribunal shall be appropriated.

15. Respondents shall deposit balance amount within period of 3 month from date of this order.

16. Award be drawn up accordingly.

(S.G. CHAPALGAONKAR, J.)