



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2954 OF 2024

Bandu Vithal Hingade
Since deceased through Legal Heirs

- 1A. Anita w/o. Bandu Hingade,
Age: 40 years, Occ.: Household,
- 1B. Ramesh s/o. Bandu Hingade,
Age: 19 years, Occ.: Labour,
- 1C. Manu @ Monika d/o. Bandu Hingade,
Age: 22 years, Occ.: Nil.

All R/o. Post Chatari, Tal. Umarkhed,
Dist. Yawatmal.

..Appellants
(Ori. Claimants)

Versus

1. Deepak S/o. Kishan Watore,
Age: Major, Occu. Business,
R/o. Chatari, Tq. Umarkhed, Dist. Yawatmal.
2. The New Indian Assurance Co. Ltd.
Through it's Branch Manager,
Branch at Lahoti Complex, Nanded,
Tq. and Dist. Nanded

..Respondents
(Original Respondents)

...

Mr. A. S. Kulkarni, Advocate for Appellants.

Mr. R. S. Wathore and Mr. S. V. Salve, Advocate for Respondent No.1.

Mrs. Anagha Rotte, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd APRIL, 2025.

PRONOUNCED ON : 25th APRIL, 2025.

JUDGMENT:-

1. The appellant/original claimant filed this Appeal under Section 173 of Motor Vehicles Act seeking enhancement of compensation, being aggrieved by judgment and award dated 07.02.2017 passed by Motor Accident Claims Tribunal, Nanded in M.A.C.P. No.6/2014. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The claimant suffered injuries in motor vehicular accident dated 02.08.2012 while he was traveling in auto rickshaw bearing Registration No.MH-29-V-81023. It collided against motorcycle bearing Registration No.MH-29-J-3034. According to claimant, accident occurred due to rash and negligent driving on the part of auto rickshaw driver. He suffered amputation of right leg below knee due to injury caused in accident. Consequently, lost his earning capacity. He was working as Meson and used to earn Rs.6000/- per month before accident. His permanent disability is assessed to 75% by Medical Officer.

3. The claim was contested by respondents i.e. owner and insurer of auto rickshaw by filing written statement.

4. The Tribunal after considering rival contentions and evidence tendered into service, accepted case of claimant and passed an award of Rs.7,20,000/- alongwith interest @ 9% per annum from

the date of institution of claim petition. Although Tribunal accepted defence of Insurance Company on the point of driving licence, directed him to satisfy award at first instance and recover compensation amount from owner of auto rickshaw.

5. Mr. Kulkarni, learned Advocate appearing for appellants would submit that Tribunal exercising jurisdiction under provisions of Motor Vehicles Act has to assess just compensation in terms of Section 168. In present case, Tribunal has awarded meager compensation. According to him, claimant being Meson lost his 100% earning capacity due to amputation of right leg below knee. Nothing has been awarded towards permanent disablement. The paltry sum is awarded towards non-pecuniary heads. He would, therefore, urge to modify award for just compensation.

6. Per contra, Mrs. Rotte, learned Advocate appearing for respondent no.2/Insurance Company supports award as passed by Tribunal. She submits that claimant failed to prove his occupation and income as Meson. The incident occurred in the year 2012. Accordingly, notional income is fixed @ Rs.5000/- per month, which is appropriate looking to the minimum wages at relevant time. She would further submit that Tribunal granted adequate compensation towards non-pecuniary heads. There is no scope for further enhancement.

7. Having considered submissions advanced, it can be observed that there is no dispute as regards to accident and eventual amputation of leg of claimant. Only point for consideration raised before this Court is as to assessment of just compensation.

8. Admittedly, claimant was hospitalized from 03.08.2012 to 12.09.2012 after accident. During hospitalization, his right leg has been amputated below knee. His second hospitalization was from 31.12.2014 to 07.01.2015, during which a second operation was performed on his leg. Dr. Rajesh Ambulgekar, Head of Department at Shakarrao Chavan Government Medical College, Nanded testified about permanent disablement of 75%. The disability certificate has been issued by Medical Board in that regard.

9. The claimant has specifically averred that he used to work as Meson prior to accident. The Tribunal has also accepted aforesaid contentions, however, assumed notional income @ Rs.5000/- per month. There is no rational behind fixing notional income @ Rs.5000/-. If claimant was working as Meson, he ought to be considered as skilled worker. Therefore, going by minimum wages applicable to skill worker in District Nanded, there was no difficulty in accepting case of claimant that he was earning Rs.6000/- per month. This Court finds that modification is necessary in findings of Tribunal on this point. The Tribunal

applied addition of 25% towards future prospects and adopted multiplier of 15, which need not be disturbed. The Tribunal awarded Rs.25,000/- towards pain and sufferings. However, no compensation is awarded towards permanent disablement, loss of amenities in life. It is trite that permanent disablement itself is independent head for grant of compensation as laid by Supreme Court of India in case of *S. Manickam Vs. Metropolitan Transport Corporation Ltd.*¹. The claimant suffered amputation of right leg at the age of 40 years. Therefore, minimum compensation of Rs.2,00,000/- needs to be awarded under caption of permanent disablement. The person suffering amputation of right leg would suffer not only physical pains during period of hospitalization or healing of injuries, but such pain shall be life long apart from mental trauma leading to frustration in life. In that view of the matter, claimant would be entitled for compensation of Rs.1,00,000/- under the head of pain and suffering, loss of amenities and expectation of life. The claimant must have spent huge amount for transportation. Even he would incur huge expenses towards transportation in future. On this count also, it is appropriate to grant compensation of Rs.50,000/-. The compensation granted by Tribunal towards special diet and attendant charges need not be disturbed. In result, compensation needs to be re-assessed as under:

¹ (2013) 12 SCC 603.

Sr. No.	Heads	Amount (Rs.)
1	Annual Income (Rs.6000 x 12)	Rs.72,000/-
2	Addition of 25% towards future prospects (Rs.72,000/- + Rs.18,000/-) =	Rs.90,000/-
3	75% loss of future earning due to permanent disablement 90,000/- x 75 / 100 =	Rs.67,500/-
4	Apply multiplier of '18' (Rs.67,500 x 15)	Rs.10,12,500/-
5	Permanent disablement	Rs.2,00,000/-
6	Pain and sufferings	Rs.1,00,000/-
7	Transportation charges	Rs.50,000/-
8	Special Diet and Attendant charges	Rs.15,000/-
TOTAL		Rs.13,77,500/-

10. So far as interest on compensation amount is concerned, it has been pointed out that present Appeal was filed alongwith application for delay condonation. This Court while condoning delay observed that entitlement of claimant to receive interest for delayed period shall be considered at the time of final hearing of Appeal. Section 171 of the Motor Vehicle Act gives discretion for grant of interest. In present case, it is apparent that Appeal was presented with huge delay of 469 days. The respondents cannot be burdened for interest for that period. Therefore, claimant shall not be entitled for the interest to that extent. However, entitlement of *pendente lite* interest on the compensation amount cannot be denied for period of pendency of claim and present Appeal. Hence, compensation amount shall carry interest @ 6% per annum excluding delayed period.

11. In that view of the matter, appeal deserves to be allowed. Hence, following order: -

ORDER

- i. First Appeal is partly allowed.
- ii. The judgment and award dated 07.02.2017 passed by the Motor Accident Claim Tribunal, Nanded in M.A.C.P. No.6/2014 is hereby modified.
- iii. The appellant/claimant is held entitled for compensation of Rs.13,77,500/- (Rs. Thirteen Lakhs Seventy Seven Thousand Five Hundred only) from respondents alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount (inclusive of amount of 'NFL') except for the period of delay of 469 days caused in filing this Appeal.
- iv. The compensation amount already paid/released in pursuance to the impugned award shall be appropriated.
- v. Rest of award as passed by Tribunal shall apply *mutatis mutandis* to modified award in this Appeal.
- vi. Award be drawn up on payment of deficit court fees.

(S. G. CHAPALGAONKAR)
JUDGE