



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

FIRST APPEAL NO. 388 OF 2017

Shri Adil Shaha Akeel Shaha,
Age : 22 years, Occu.: Education,
R/o.: Flat No.12, Master Colony,
Mehrun, Jalgaon

... APPELLANT
(Original Claimant)

VERSUS

1. M/s Bhagwati Roadlines Private Ltd.
R/o.: Shop No.5, Anand Building,
Dongarpada, Ghodbandar Road,
Thane (West), Dist. Thane Pin 400607

2. The National Insurance Company Ltd.
Through The Manager,
299 Baliram Peth, Jalgaon, Tal &
District : Jalgaon

... RESPONDENTS

...
Mr. M. M. Bhokrikar, Advocate for Appellant
Mr. V. R. Mundada, Advocate for Respondent No.2
....

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 17/02/2025

Pronounced on : 04/03/2025

JUDGMENT :

1. The claimant in MACP No.343 of 2006, has preferred this appeal against the judgment and award dated 26/09/2014 in the aforesaid claim petition, passed by the learned Motor Accident Claims Tribunal, Jalgaon, (hereinafter referred to as 'the learned Tribunal') only being aggrieved by the quantum of compensation. According to him, the

learned Tribunal has granted less amount of compensation by ignoring vital aspects such as notional income, compensation under pain and sufferings and expenses of future medical treatment etc.

2. The learned counsel for the appellant / claimant submitted written notes of argument alongwith fresh calculations by relying on certain judgments as follows:

- A) ***Miss. Rushi @ Ruchi Thapa vs. M/s. Oriental Insurance Co. Ltd. And another, SLP (C) NO.6176 of 2023, decided on 5.11.2024 (SC);***
- B) ***Master Ayush vs. The Branch Manager, Reliance General Insurance Co. Ltd. And another, (2022) 1 S.C.R.;***
- C) ***Sidram vs. Divisional Manager, United India Insurance Co. Ltd. And another, AIROnline 2022 SC 890 &***
- D) ***V. Mekala vs. M. Malathi and another, AIR 2014 SC (Supp) 22***

3. On the contrary, the learned counsel for respondent No.2 – Insurance Company, who is a contesting respondent, has also filed written notes of argument by supporting the impugned judgment and award.

4. Heard rival submissions. Also perused the record and proceedings of the original claim petition alongwith the impugned judgment. Also considered the written notes of arguments filed by the rival contesting parties and the judgment cited by the appellant / claimant.

5. The necessary particulars in respect of the accident and the treatment thereof taken by the appellant / claimant, are not disputed by respondent No.2 – Insurance Company. However, the present appeal is only in respect of granting less quantum of compensation. Such as, various factors require for computing just and fair compensation, are to be considered afresh. The main contention of the learned counsel for the appellant / claimant is that the learned Tribunal failed to appreciate the income of the injured / appellant to the tune of Rs.3,000/- per month. According to him, it has to be at least Rs.6,000/- per month. Further, he pointed out that the learned Tribunal did not grant any compensation under the head of future prospects. Therefore, according to him, an amount of Rs.19,44,000/- should have been considered as loss of earnings plus future earnings of Rs.9,72,000/-. The learned counsel for the appellant / claimant has also given certain calculations to that effect by relying upon various judgments. However, though certain principles have laid down by the Hon'ble Apex Court as to what should be the just and fair compensation, but to calculate the said amount of compensation, evidence of each case has to be considered and then the just amount of compensation to that effect is to be calculated.

6. In the present case, the appellant is claiming that his monthly income has to be treated as Rs.6,000/- in view of the circular dated 25/05/2006 of Government of India, Ministry of Labour and Employment Office, wherein minimum wages of a highly skilled labour

are fixed at the rate of Rs.205.58 per day. However, in the instant case, it is already established that the appellant / claimant was only of 14/15 years of age at the time of the accident and therefore, there was no reason to fix his monthly income to the rate of Rs.6,000/- by treating him at par with a skilled labour. He was just a college going boy. Moreover, it is contended by the appellant / claimant that he was also doing milk business, but no evidence is on record to that effect. As such, there is no force in the submission on behalf of the appellant / claimant that his income should have been treated as Rs.6,000/- per month.

7. It is to be noted that the Hon'ble Apex Court in the recent judgment dated 05/11/2024 in case of **Miss. Rushi @ Ruchi Thapa vs. M/s. Oriental Insurance Co. Ltd. And another**, has calculated the amounts of compensation under various heads by relying upon its earlier judgment in the case of **Kajal vs. Jagdish Chand and others, AIR 2020 SC 776**. The Hon'ble Apex Court has considered various heads such as, loss of amenities, future medical treatment and actual loss of income alongwith the medical and hospitalization charges. Here in this matter, the learned Tribunal has considered three of the aforesaid heads but did not consider aspect of future prospects. Further, considering the amputation of one leg of the appellant / claimant, the learned Tribunal did not deduct any amount towards amount of future loss of earnings by treating said disability as 100% functional disability. However, mere amputation of one leg below the knee, would not amount to 100%

functional disability since the appellant / claimant still can do any other sitting job. Further, with the help of an artificial limb such as Jaipur foot he can also perform a moving job with certain restrictions. Therefore, by considering all these aspects the compensation needs to be calculated in the light of evidence on record.

8. As held earlier, the monthly income of the appellant / claimant need not to be taken as Rs.6,000/- per month but whatever income of Rs.3,000/- per month considered by the learned Tribunal is absolutely proper in absence of any supporting evidence regarding the alleged milk business of the appellant / claimant. Thus, the income is considered as Rs.3,000/- per month and therefore, the yearly income of the appellant comes to Rs.36,000/-. Further, in view of the judgment of the Hon'ble Apex Court in the case of **Jagdish vs. Mohan and others, (2018) 4 SCC 571**, future prospects to the extent of 40% needs to be added by treating the appellant / claimant as a self employed. On making such addition, his yearly income comes to Rs.50,400/-. Further, the functional disability due to loss of one leg below the knee has to be considered to the extent of 50%. As such, when such percentage of disability is applied to the notional income of the appellant / claimant, the future annual loss of earnings come to Rs.25,200/-. The appellant / claimant appears to be in the age group of 15 to 20 and therefore, multiplier of 18 will be applicable as per the observations of the Hon'ble Apex Court in the case of **Smt. Sarla Verma (Smt.) vs. Delhi**

Transport Corporation - (2009) 6 SCC 121. Thus, the future loss of income comes to Rs.4,53,600/-. In the aforesaid amount, an amount of Rs.1,00,000/- towards pain, sufferings and loss of amenities needs to be added. The appellant / claimant is also entitled for expenditure of Rs.15,000/- on account of future medical treatment for having an artificial limb. Further, an additional amount of Rs.25,000/- under the head of attendant and special diet can also be granted. Further, considering the period of hospitalization and the injury of the appellant / claimant, an amount of Rs.25,000/- towards the actual medical expenditure can also be added. Thus, just and fair compensation for which the appellant is entitled, is computed as below:

No.	Head	Amount (in Rupees)
1.	Future loss of earnings by considering future prospects	4,53,600/-
2.	Pain, suffering and loss of amenities	1,00,000/-
3.	Actual medical expenditure	25,000/-
4.	Future medical expenses	15,000/-
5.	Attendant charges and special diet	25,000/-
	TOTAL =	6,18,600/-

Thus, the just and fair compensation which is awarded to the appellant is determined as Rs.6,18,600/- inclusive of the award under Section 140 of M. V. Act on the principle of no fault liability. However, the amount granted by the learned Tribunal towards the compensation

of Rs.5,00,000/- needs to be deducted from the aforesaid compensation. Further, it appears that the learned Tribunal has granted interest on the aforesaid amount of compensation at the rate of 7.5% p.a. from the date of the claim petition till its realization. The said rate of interest appears reasonable considering the prevailing rate of interest at the relevant time. Thus, the appeal is partly allowed and now the appellant is entitled for enhancement amount of Rs.1,18,600/- alongwith interest at the rate of 7.5% p.a. from the date of claim petition till its realization. The respondent Nos.1 & 2 shall jointly and severally pay the aforesaid amount of compensation within 8 weeks. They are directed to deposit the said amount of compensation alongwith the accrued interest thereon in this court. On deposit of such amount of compensation, the appellant shall be entitled to withdraw the same without further reference to the order of this court.

9. The appellant shall pay the deficit court fees, if any, on the enhanced compensation, within four weeks after it is computed by the office.

10. Record and proceedings be sent to the concerned MACT forthwith.

Accordingly, the appeal is disposed of.

(SANDIPKUMAR C. MORE, J.)