



{1}

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

FIRST APPEAL NO.238 OF 2017

Reliance General Insurance Company,
Through its Manager,
R/o. Reliance General Insurance Company,
Adalat Road, Aurangabad ... Appellant

Versus

1. Bhanudas Vithoba Khodade,
Age: 65 years, Occu.: Agril.,
R/o. Kinhi, Tq. Parner,
Dist. Ahmednagar
2. Vijay Bhimraj Chitale,
Age: major, Occu.: Business,
R/o. AP 53, Kawade Galli,
Nalegaon, Ahmednagar ... Respondents

.....
Mr. R.H. Dahat and S.S. Patil, Advocates for Appellant,
Mr. R.B. Dhakne, Advocate for Respondent No.1
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 JULY 2025

PRONOUNCED ON : 15 JULY 2025

JUDGMENT :-

1. The appellant/insurance company is hereby taking exception to the judgment and award dated 26.09.2016 passed by the Motor Accident Claims Tribunal, Ahmednagar in M.A.C,P No. 841 of 2011 filed at the instance of present respondent no.1/original claimant.

{2}

2. Learned counsel for the appellant/insurance company would submit that respondent original claimant, Bhanudas (present respondent no.1), filed an accident claim petition under Section 166 of the Motor Vehicles Act, contending that he was proceeding on a motorcycle bearing registration No. MH-14-H-804 towards village Ane after meeting his daughter. The motorcycle was driven by him and his brother Kashinath was the pillion rider. When their motorcycle was in the vicinity of village Kanhur, a motorcycle bearing No. MH-16-AP-3040, being driven by one Sayaj Bhagchand Dharam, came from the opposite direction at an excessively high speed and gave dash to the motorcycle, in which respondent No.1/claimant and his brother Kashinath suffered serious injuries.

3. The learned counsel pointed out that, it was alleged that the accident occurred solely due to the rash and negligent driving of the rider of the motorcycle bearing No. MH-16-AP-3040. However, according to him, there was no evidence to suggest that the rider of the said motorcycle was solely responsible or was riding the motorcycle in a rash and negligent manner. The learned counsel fairly submitted that, the present appeal is confined to the claim awarded by the Tribunal, even

{3}

though the medical bills were not proved by cross-examining any witness. Therefore, he questions the finding and compensation awarded by the Tribunal.

4. Per contra, the learned counsel for respondent no.1 opposed the above submission and, moreover, has set up a claim for enhancement, as respondent no.1/original claimant has allegedly not received just compensation. Learned counsel would submit that, the Tribunal has not granted just compensation. That, it ought to have been appreciated that respondent no.1/original claimant is retired teacher and was getting pension of Rs.12,000 to Rs.13,000 per month. Apart from that, he was also conducting agricultural activities and earning income from the same. Due to the disability suffered in the accident, his participation in conducting agricultural activities has been affected. Learned counsel enumerated the number and nature of injuries suffered by his client and would point out that, huge amount would be required for treatment in several hospitals, including Jahangir Hospital at Pune. That, doctor had derived 40% disability. Because of the accidental permanent disability, there is loss of future income and no amount has been awarded under the head of “future prospects”,

{4}

and therefore, he placed on record calculation pursis seeking enhanced compensation to the tune of RS.22,98,720/-along with interest @ 9% p.a.

5. Heard both the sides. Perused the record as well as impugned judgment and award.

6. After considering the submissions advanced by the learned counsel for the insurance company and on perusal of the impugned judgment, particularly paragraph no.17, there appears to be a discussion regarding the claim set up by the claimant towards medical bills at Exhibit 23.

7. While allowing the claim, the Tribunal seems to have granted total compensation to the tune of Rs.9,19,000/- by taking into account the medical bills including expenses to the tune of Rs. 7,50,720/- with regard to Jahangir Hospital, where respondent no.1 was treated for considerable period.

8. Claimant also set up his claim for suffering 40% disability. However, Exhibit 29, as pointed out by learned counsel for the insurance company, is issued by the doctor, who has not treated respondent no.1/claimant as it is apparently issued by one Dr. Kamlakar, and he too had already admitted that, fracture injures

{5}

have healed-up. Even respondent no.1/claimant, before the Tribunal, seems to have admitted that he came to the Court by State Transport bus and was not required to use any aid to reach the Court. Such aspects, as dealt with by the Tribunal in paragraph 16, do go to show that the nature of the disability suffered by respondent no.1/claimant does not amount to functional disability. Moreover, he is a pensioner, and therefore, the question of loss of future income, as claimed by him, does not arise. As regards the agricultural income, it was previously got done, and there is nothing on record to demonstrate that respondent no.1/claimant himself conducted agricultural activities, and due to so-called accidental disability, he has been further incapacitated from conducting agricultural activities for earning income source. Therefore, the Tribunal has committed no error whatsoever in refusing to grant amount distinctly under the head of “loss of future income”. Even the location of injuries allegedly suffered is below the knee and are not serious or grievous, and the doctor who issued the disability certificate has admitted that the fracture injuries were healed up. On the points of disability, future prospects and different heads, learned counsel for respondent no.1/claimant has placed reliance on *Pappu dev Yadav v. Naresh Kumar and others* AIR 2020 SC

{6}

4424, *Lalan v. Oriental Insurance Co. Ltd.* AIR 2020 SC 4508, *Erudhaya Priya v. State Express Transport Corporation Ltd.* AIR 2020 SC 4284, *K.S. Murlidhar v. R. Subbulakshmi and another* AIR 2025 SC 70, *Kajal v. Jagdish Chand and others* (2020) 4 SCC 413, *Deepak Sing alias Deepk Chauhan v. Mukesh kumar* AIR 2025 SC 1094 and *Chandramma v. Manager, Regional Office, NCC Ltd. And another* (2023) 2 SCC 144. However, facts in those cases are not identical and in most of the cases, the nature of injuries and percentage of disability to the claimants therein are different. Therefore, the present case cannot be equated with the facts of those cases so as to seek further enhancement.

9. However, after noticing the quantum awarded under pain and suffering, the Tribunal seems to have awarded Rs.80,000/-. Considering the fact that respondent no.1/claimant is a pensioner and taking into account his age, the amount awarded under the head “pain and suffering” is required to be enhanced from Rs.80,000/- to Rs.1,00,000/-. So also, respondent no.1/claimant is entitled for compensation for 40% disability and not 30%. The same is required to be enhanced from Rs.60,000/- to Rs.80,000/-.

{7}

10. It is settled law that, even without filing separate appeal or cross-objection, claimants can seek enhancement of compensation in view of judgments of Hon'ble Apex Court in case of *Nagappa Vs. Gurudayal Singh and Others* (2003) 2 SCC 274 and *Jitendra Khimshankar Trivedi and Others Vs. Kasam Daud Kumbhar and Others* (2015) 4 SCC 237 and in view of the law laid down in case of *Helen C. Rebello and others Vs. Maharashtra State Road Transport Corporation and others* (1999) 1 SCC 90 and considering the facts of the present case, the quantum awarded under remaining heads seems to be just and proper.

11. In view of the above discussion, the compensation needs to be re-assessed as under:-

Heads	Amount awarded
Towards permanent disability	Rs.80,000
Towards Medical bill & Medicines	Rs.7,50,720/-
Towards travelling	Rs.6,000/-
Towards Special food	Rs.11,000/-
Towards attendant	Rs.11,000/-
Towards pains and sufferings	Rs.1,00,000/-
Total	Rs.9,58,720/-
Rounded off	Rs.9,59,000
Compensation awarded by Tribunal	(-) Rs.9,19,000/-
Enhanced compensation	Rs.40,000/-

{8}

12. In the result, following order:

ORDER

- (i) First Appeal filed by Insurance Company is hereby dismissed with no order as to costs.
- (ii) Impugned Judgment and award dated 26.09.2016 passed by Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No. 841 of 2011 is modified to the effect that claimant is held entitled for enhanced compensation of Rs.40,000/- along with interest @ 9% p.a. from the date of claim petition till its realization.
- (iii) Insurance Company shall pay the enhanced compensation along with accrued interest in the Tribunal within 12 weeks from the date of uploading of this judgment.
- (iv) On deposit of the amount by Insurance Company, appellants/claimants are permitted to withdraw the same.
- (v) Rest of the award is maintained.
- (vi) Claimant to pay Court fees on enhanced compensation as per rules.

**ABHAY S. WAGHWASE,
JUDGE**