IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 357 OF 2024

National Insurance Company Ltd.
R/o. Cosmos Commercial Complex,
Near Anugraha Hotel Kolhapur
Policy No.61002/31/13/6300008706 ..... Appellant

Vs.

1) Shri. Dineshkumar Mishrilal Vaishnav
Age – 35 years, Occu. Service (At present Nil), R/o. Shripad Nagar,
Behind Dr. Banarase Hospital,
Ichalkaranji, Tal. Ichalkaranji,
Dist. Kolhapur.

2) Shri. Sandip Krishnath Shinde
Age – Major, Occu. Business,
R/o. Khebvade, Tal. Karveer,
Dist. Kolhapur, Maharashtra

3) Shri. Anant Jotiram Bhosale
Age – Major, Occu. Driver,
R/o. Shinganwadi, Tal. Dharur,
Dist. Beed. ..... Respondents

Ms. D. Shalini Shankar for the Appellant.
Mr. Avesh Ghadge i/b. Mr. Akshay Kulkarni for Respondent No.1.

CORAM : SHYAM C. CHANDAK, J.

DATED : 22nd APRIL, 2025.

JUDGMENT :-

. Present Appeal under Section 173 of the Motor Vehicles Act, 1988 ("**the Act**") has been directed against the Judgment and

Award dated 03/03/2022, in M.A.C.P. No.22 of 2015 (**"claim"**), passed by the Motor Accident Claims Tribunal, *Ichalkaranji*, Dist. Kolhapur (**"Tribunal"**) thereby said claim filed under Section 166 of the Act, was partly allowed with proportionate costs and Respondent Nos.2, 3 and the Appellant (Original Opponent Nos.1, 2 and 3) held jointly and severally liable to pay the Respondent No.1/Original Claimant a sum of Rs.14,81,160/- along with interest @ 7% p.a. from the date of filing of the claim till realization of the amount.

2) The learned Advocate for the parties submitted that the Appellant has no statutory defence against Respondent No.2. Therefore, the Appeal may be taken up for final hearing at the stage of admission itself. For this purpose, compilation of documents is filed by Ms. Shankar, the learned Advocate for the Appellant. Hence, considering the facts of the case and the issues involved, the Appeal is taken up for final hearing.

3) Heard Ms. Shankar, the learned Advocate for the Appellant and Mr.Ghadge, the learned Advocate for Respondent no.1.

4) The facts in brief are that the claimant filed the said claim therein it was averred that on 11/12/2014, at about 01:30 p.m., in front of the office of *Panchganga* Sugar Mill, *Korochi* to *Ichalkaranji* road, the claimant was proceeding on his Hero Honda motorcycle bearing No.MH-09/CG-3977 ("**M/cycle**"). At that time, a motor truck

bearing No. MH-09-7475 ("**truck**") came from opposite side and gave a dash to the M/cycle. As a result, the claimant sustained serious injuries. Immediately, the claimant was removed to I.G.M. Hospital at *Ichalkaranji* and then he was shifted to the hospital of Dr. Deshmukh. It was averred that the accident occurred due to rash and negligent driving by the driver of the truck. Therefore, Shahapur Police Station registered an FIR bearing C.R.No.26/2014, under Sections 279, 337 and 338 of I.P.C. and Section 184 and 134 (a), (b) of the Act against the driver of the truck.

4.1) It was averred that the claimant was aged 35 years. He was doing cloth inspection work and serving at Harihar Weaving Mill, Khanjire Estate, Shahapur, Ichalkaranji on a monthly salary of Rs.18,000/-. In all, the claimant was getting income of Rs.2,17,280/- per annum. The accidental injuries caused him disability, which resulted in the loss of his income. The claimant, therefore, prayed to award compensation of Rs.10,00,000/-.

5) Respondent No.2 received the notice, but he did not file his appearance, hence, he was proceeded against *ex-parte*. The Appellant opposed the claim by filing the written statement (Exh.20). The Appellant denied that the accident occurred due to rash and negligent driving of the truck. It was denied that the claimant sustained grievous injuries in the accident and said injuries caused

him disability. It was contended that, in fact, the claimant himself dashed the truck and thus, he was solely responsible for the accident. In any case, this was a case of contributory negligence where the claimant and the driver of the truck both were negligent in the ratio of 50:50. It was contended that the driver of the truck was not having valid and effective driving license.

6) Hence, the Tribunal framed the issues. To prove the claim, the claimant adduced his evidence on Affidavit (AW1/Exh.22). He examined AW2-Sagar Sudhakar Jadhav, Inspector, Income Tax Department (AW2/Exh.44) and Dr. Amit Deshmukh (AW3/Exh.51). Beside, the claimant has relied upon various documents in evidence.

7) On appraisal of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the truck. The claimant had sustained fracture to right femur shaft with comminuted fracture to lower/distal end of right radius/wrist (multiple piece of bone). The fractures caused the claimant 30% permanent partial disability. The Income Tax Returns (Exh.46) show that, in the financial year 2014-15/assessment year 2015-16, the net annual income of the claimant was Rs.2,86,700/-. The claimant has suffered 30% loss of the income capacity on account of said disability. Therefore, and considering the nature of the injuries etc., the Tribunal awarded the compensation as under :-

1.	Rs.2,86,700 **x** 16 multiplier = Rs.45,87,200/- **x** 30% disability	Rs.13,76,160/-
2.	Hospital bills and medicines (proved)	Rs. 75,000/-
3.	For Physical pains and agony	Rs. 20,000/-
4.	Conveyance and special diet	Rs. 10,000/-
	Total	**Rs.14,81,160/-**

8) Ms. Shankar, the learned Advocate for the Appellant submitted that in the financial year 2013-14/assessment year 2014-15, the annual income of the Claimant was Rs.2,17,280/-, but the said income increased after the accident even though the claimant has suffered the disability. She submitted that the claimant has also admitted that post accident, his income has been increased. She, therefore, emphatically submitted that the disability did not result in the loss of the future income/income capacity. As such, the Tribunal should have declined to award the compensation towards the loss of the future income. She submitted that the award under the other heads is excessive. Ms. Shankar, therefore, urged that the impugned Judgment and Award may be modified.

9) In contrast, Mr. Ghadge, the learned Advocate for the claimant submitted that the Tribunal did not award any compensation towards the future prospects. In fact, according to Mr. Ghadge, the Tribunal failed to quantify the award in accordance with catena of decision in the field of injury claims and the decision in

National Insurance Co. Ltd. Vs. Pranay Sethi and Others[1] and ***R.D. Hattangadi V/s. Pest Control (India) Pvt. Ltd.***[2] Mr. Ghadge submitted that, if the principles enunciated in the said decision applied to the case on hand, then it cannot be said that the awarded amount is exorbitant.

10) Insofar as the accident is concerned, there is nothing on record to take an exception to the finding recorded by the Tribunal that the accident occurred due to rash and negligent driving of the truck. In fact, the FIR was registered only against the driver of the car, who ultimately stood chargesheeted for causing the accident by driving the car rash and negligently. Despite opportunity, the Appellant did not examine the driver of the car to rebut the evidence of the claimant. As such, an adverse inference is permissible. In view thereof, I am in agreement with the finding recorded by the Tribunal that the accident occurred due to negligent driving of the car.

11) AW2-Dr. Deshmukh is the medical practitioner who medically treated the claimant. He deposed that the claimant had suffered the aforesaid injuries due to the accident. Evidence of AW2 coupled with the Medico-legal Certificate (Exh.29) indicates that AW2 fixed the fracture with implant and nailing. AW2 deposed that there is terminal restrictions on movements of the wrist. The claimant

1. *2017 ACJ 2700 (SC)*
2. *AIR 1995 SC 755*

has difficulty in squatting, walking, sitting cross-legged, weight bearing and slight limping problem. AW2 deposed that thus, the claimant has suffered total 30% disability, which includes 10% disability for upper extremity and 20% for lower extremity. Accordingly, he issued the Disability Certificate (Exh.57). The aforesaid evidence did not meet sufficient challenge in the cross-examination of AW2. Therefore, the Tribunal is right in accepting the disability. Ms. Shankar, the leaned Advocate has not disputed the disability.

12) Now turning to the question of the loss of the income on account of the disability. In this regard the evidence of the claimant is that he has been doing the cloth inspection work in the private Mill and thereby earning a monthly salary of Rs.18,000/-, as above. In all, he was getting income of Rs.2,17,280/- per annum. He suffered a financial loss on account of the disability. In the cross-examination, the claimant admitted that as per his income tax returns, his income increased after the accident. The evidence of AW2 is that, as per the Income tax Return for the financial year 2013-2014/Assessment year 2014-2015 (Exh.45), the claimant's income was Rs.2,17,280/-. As per the Income tax Return for the financial year 2014-2015/Assessment year 2015-2016 (Exh.46), his income was Rs.2,86,670/-, which return was submitted on 04/07/2015, i.e., after the accident. Thus, it is

evident that although the claimant has suffered the disability, it did not reduce his income capacity. Nevertheless, it cannot be ignored that the disability restricted various important actions of the claimant's body. The claimant has suffered fracture of the femur bone, which is very important part of a human body as it helps the body in many ways.

13) In the judgment ***Sandeep Khanuja Vs. Atul Dande***[3]*,* it is held that*, "………it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident". ….* It is observed that, "*The multiplier system is based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional case*".

14) It is a settled law that money cannot bring back or restore the physical frame that has been lost to the accidental injuries. Therefore, what the Tribunal and Court can do is to award sums which must be regarded as 'just compensation'. In the process of deciding 'just compensation', there must be the endeavour to secure

3. *2017 (1) TAC 673 (SC)*

some uniformity in the general method of approach. In personal injury cases the Courts should not conceive and award merely token damages but they should grant substantial amount which could be regarded as 'just compensation'. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame. Compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed: the loss of amenities of life and infliction of pain and suffering; the loss of the good things of life, joys of life and the positive infliction of pain and distress.

15) In the case in hand, considering the fact that the claimant can do his job, the disability suffered by him is not more than 21% with reference to his whole body. However, it cannot be ignored that, the claimant was aged 35 years. Therefore, he should tolerate that

disability and related pain, throughout his life. The disability will certainly interfere with his enjoyment of the life. There is no evidence that the claimant was in permanent employment. Therefore, in the facts of this case, applying the multiplier method to determine the 'just compensation' would be helpful.

16) There is nothing on record to doubt the I.T. Returns produced in the evidence and proved by the claimant and AW2. Therefore, there is no hurdle to accept that the claimant's net income was Rs.2,86,670/-. In accordance with the decision in the case of ***Pranay Sethi*** (supra), 40% income should be added towards the future prospects of the claimant. As such, his net actual yearly income will be Rs.4,01,338/-. Considering the nature of the injuries and the difficulties it caused, the permanent partial disability suffered by the claimant is 21% as noted above. The applicable multiplier is '16'. Accordingly, the claimant should get award of Rs.13,48,495/- towards the said 21 % disability. This amount is almost close to the amount awarded by the Tribunal towards the disability. The compensation awarded under the others heads is not on higher side. On the contrary, the compensation granted for 'pain and suffering' appears less. No compensation is conceived and awarded for the loss of the amenities of the life due to the disability. I, therefore, hold that the compensation awarded by the Tribunal is not excessive or exorbitant.

17) Conspectus of the above discussion is that there is no substance in the Appeal thereby warranting an interference in the impugned Judgment and Award to reduce the compensation. As a result, the Appeal is liable to be dismissed and is dismissed, accordingly.

17.1) In views of the peculiar facts of the case, the parties shall bear their own costs.

PREETI HEERO JAYANI

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(SHYAM C. CHANDAK, J.)