IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.573 OF 2024

Appellant (Ori. N.A. 2) (On R.A.)	:		The Branch Manager, ICICI Lombard General Insurance Co. Ltd., 5th Floor, Land Mark, Plot No.5 & 6, Wardha Road, Ramdaspeth, Nagpur, Through its Manager (Legal)
			– Versus –
Respondents (Ori. Claimant) (On. R.A.)	:	**1.**	Bhushan s/o Madhukar Dhole, Age 36 years, Occ: Private Job, R/o C/o Vasant Brigade, Plot No.6, Gavandipura, Sakkardara, Nagpur
(Ori. N.A.1) (On. R.A.)		**2.**	Madhukar s/o Shankar Dhole, Age Major, Occ : Owner, R/o At Post Borgaon (Dhole), Junapani, Tq. Karanja (Ghadge), Dist. Wardha- 442203.

CROSS APPEAL ST. NO.2069 OF 2026

Appellant (Orig. Respondent No.2)	:		The Regional Manager, The ICICI Lombard Gen. Ins. Co. Ltd., 5th Floor, Landmark, Plot No.5 & 6, Wardha Road, Ramdaspeth, Nagpur.
			– Versus –
Respondents Cross Objector (Original Claimant – Now Respondent No.1)	:	**1.**	Bhushan s/o Madhukar Dhole, Aged about 37 yrs. Occ. - Pvt. Job, R/o C/o Vasant Birgade, Plot No.6, Gavindipura, Sakkardara, Nagpur
(Original Respt. No.1- Now Respondent No.1)		**2.**	Madhukar s/o Shankar Dhole, Aged about Major, Occ : Owner, R/o At Post Borgaon (Dhole), Junapani, Tq. Karanja (Ghadge), Dist. Wardha- 442203.

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Mr. R.D. Bhuibhar, Advocate for the Appellant.
Ms. M.M. Zunke, Advocate for the Respondents/Cross Objector
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CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 18th APRIL, 2026.
PRONOUNCED ON : 29th APRIL, 2026.

JUDGMENT :

01. **Admit**. With the consent of both the parties it is heard finally at the stage of the admission.

02. The present appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 16/06/2023 passed in Claim Petition No.842/2017 by the learned Member, Motor Accident Claims Tribunal, Nagpur (hereinafter referred to as “the Tribunal” for the sake of brevity), thereby holding that, the respondent No.1/claimant is entitled to receive an amount of Rs.33,93,672/- towards compensation under all heads, on account of sustaining 80% functional disability in a vehicular accident occurred on 02/05/2017.

03. The appellant–Insurance Company is the original respondent No.2 and present respondent No.2 is the original respondent No.1, i.e., the owner of the tractor, whereas present respondent No.1 is the original petitioner in Claim Petition No.842/2017. For the sake of brevity, the parties to the present appeal are hereinafter referred to in their original capacities.

04. In a nutshell, the facts giving rise to the present appeal are as under:

i. On 02/05/2017, the driver of the tractor bearing No. MH-32-P-5871, owned by respondent No.1, was taking the tractor out of the Courtyard in reverse without taking proper care, due to which said tractor hit the petitioner-claimant and ran over his right leg, which resulted in amputation of right leg of the claimant above knee. According to the claimant, the said accident occurred due to rash and negligent driving on the part of the driver of the tractor.

ii. The said tractor was insured with respondent No.2–Insurance Company. The claimant incurred huge expenses towards medical treatment and also suffered loss of earnings, expenses towards conveyance, attendant charges, special diet, as well as pain, loss of amenities of life and hardship, etc.

iii. According to the claimant, he sustained 80% permanent disability; however, due to amputation of his right leg above the knee, he suffered 100% loss of earning capacity. At the relevant time, he was about 30 years of age and he was engaged in private employment. Beside this he was drawing income of Rs. 20,000/- per month by cultivating the land. Therefore, he claimed compensation of Rs.32,00,000/- under the different heads, as enumerated in paragraph 25-(B) of the claim petition. Therefore, the respondent/owner and the Insurance Company are jointly and severally liable to pay the said compensation.

iv. After service of notice, respondent No.1–tractor owner appeared but failed to file a written statement. Respondent No.2–Insurance Company filed its written statement at Exh.14 and denied the claim of the claimant. According to respondent No.2, the claim is false and vexatious; the claimant is the son of respondent No.1, who is owner of the vehicle; the F.I.R. was lodged after 78 days by creating a false and fabricated story; the claimant is not a third party and the accident did not occur in a public place. The Insurance Company denied all the averments made in the petition, except the ownership of the vehicle by respondent No.1.

v. On the basis of the rival pleadings of both sides, the learned Tribunal framed Issues at Exh.17. During the course of trial, the claimant filed his evidence affidavit at Exh.18 and proved Form Comp AA (Exh.23), F.I.R. dated 19/07/2017 registered with Karanja Police Station (Exh.24) and Spot Panchnama (Exh.25). The claimant examined Dr. Samir Chandrakant Raghatate as

PW-2, who medically treated the claimant and proved the Discharge Card (Exh.31). The claimant further examined Mr. Vishwas Waman Jadhav as PW-3 at Exh.38 and proved salary slips for the months of March 2017, April 2017 and May 2017, which are marked at Exh.45A, Exh.45B and Exh.45C, respectively. The claimant also examined Dr. Rakeshkumar s/o Ramswarup as PW-5 at Exh.41, who proved the estimated cost of the artificial limb (Exh.42A and Exh.42B). Besides this, the claimant proved receipts (Exh.47A and Exh.47B), 7/12 extract (Exh.48), and Disability Certificate (Exh.26).

vi. By the judgment and award dated 16/06/2023, the learned Tribunal held that, the claimant is entitled to receive compensation of Rs.33,93,672/- under the various heads i.e. medical expenses, loss of earnings, conveyance, attendant charges, special diet, pain and suffering, loss of amenities of life, hardship, etc. Being aggrieved by the said judgment and award, the appellant–Insurance Company has instituted the present appeal.

05. Heard Mr. R.D. Bhuibhar, learned Counsel appearing for the appellant and Ms. A.A. Zunke, learned Counsel appearing for respondent No.1–claimant (Cross Objector). None appears for respondent No.2.

06. The learned Counsel for the appellant canvassed in vehemence that, at the time of the accident, the respondent–claimant was allegedly in private employment and produced salary slips for the months of March, April, and May 2017 (Exh.45A to Exh.45C). However, as per the salary slips, the claimant was drawing gross salary of Rs.8,656/-. Besides, the claimant was receiving variable incentives, which were not fixed. Therefore, the learned Tribunal ought to have ascertained the loss of income of the claimant on the basis of the average incentives received by him for the months of March, April, and May 2017. However, the Tribunal has only considered monthly income of the claimant at Rs.15,000/-, which is excessive, hence, prayed for modification of impugned judgment and award.

07. *Per contra*, the learned Counsel appearing for respondent No.1–claimant supported the findings recorded by the Tribunal. The learned Counsel for the claimant canvassed that, PW-3 Mr. Vishwas Waman Jadhav deposed at Exh.38 that, respondent No.1–claimant was working with PNB Housing Finance Limited as a Sales Officer since past two years and he was drawing monthly remuneration of Rs.7,200/-, besides incentives, which were generally paid in the month of March. Therefore, the salary/pay slips (Exh.45A to Exh.45C) proves that, the claimant drawn monthly income of Rs.30,262/- for the month of March 2017, Rs.21,468/- for the month of April 2017 and Rs.7,223/- for the month of May 2017. Therefore, considering the average income of respondent No.1–claimant, the Tribunal granted

compensation, which is just and proper. Therefore, the appellant failed to set out substantial grounds to interfere with the findings recorded by the Tribunal. Therefore, prayed for dismissal of the appeal.

08. The Respondent/Claimant has filed Cross Appeal and claimed that, at the time of the accident, he was 30 years old. He was engaged in private employment and he was also cultivating the land. He was drawing income of Rs.20,000/- per month. The learned counsel for the claimant canvassed that, the respondent–claimant adduced evidence and examined PW-3 to prove that he was earning Rs.21,000/- per month. However, after occurrence of the accident, the respondent–claimant resigned from his job due to his inability to discharge his duties on account of amputation of his leg. It is further canvass that, the respondent–claimant is not in a position to perform the agricultural operations. Therefore, considering 80% permanent disability, the respondent/claimant has suffered 100% loss of earning capacity. However, the learned trial Court committed grave error in awarding meagre amount of compensation without consideration of future required expenses for the artificial limb, hence, prayer for enhancement of compensation.

09. In the present appeal, the Insurance Company has challenged only the quantum of compensation mainly on the ground that, the learned Tribunal failed to consider actual monthly income of respondent No.1/claimant but considered monthly income of Rs.15,000/-.

10. In order to ascertain the income of the claimant, I have gone through the R & P (Record and Proceedings). It is not in dispute that, on 02/05/2017, at about 08:00 p.m., when the driver of the tractor bearing No. MH-32-P-5871, owned by present respondent No.2, was taking the tractor in reverse, the said Tractor hit the claimant and ran over his right leg, which resulted in serious injury. Ultimately, right leg of the claimant amputated above the knee. The occurrence of the accident and amputation of the right leg above the knee of the claimant are not disputed by the appellant–Insurance Company.

11. As per the spot-panchnama (Exh.25), the accident occurred when the driver - Pradip Dobale took the tractor in reverse from the courtyard of respondent No.2- the owner of the tractor. As per the medical report (Exh.31), the claimant sustained multiple injuries to his right leg, which resulted in amputation above the knee. As per the Disability Certificate (Exh.26) issued by the Medical Board, the claimant has sustained 80% disability. The fact of amputation of the right leg of the claimant is not denied by the appellant–Insurance Company. The appellant has also not seriously disputed the grant of compensation under the heads of medical expenses, conveyance, attendant charges, special diet, pain and suffering, loss of amenities of life, hardship, etc. However, only dispute is with regard to the quantum of loss of earnings.

12. In the case at hand, it *prima facie* appears that, at the time of the accident, the claimant was aged about 32 years. Therefore, as per the table prescribed in *Sarla Verma and others vs. Delhi Transport Corporation and another* – 2009(5) Mh.L.J. 775, the multiplier of 16 would apply. As per the evidence of PW-4 Vishwas Jadhav, at the time of the accident, the claimant was serving as a Marketing Officer/Sales Officer since 2016. PW-4 produced salary slips (Exh.45A to Exh.45C) for the months of March 2017, April 2017, and May 2017. However, the claimant failed to prove his salary slips for the preceding 12 months of the accident. As per the salary slips (Exh.45A to Exh.45C), the claimant was drawing a fixed salary of Rs.8,656/- excluding house rent allowance of Rs.1,044/- and statutory bonus of Rs.722/-, aggregating to Rs.10,422/- per month. However, the salary slips (Exh.45A to Exh.45C) proves that the claimant received incentives in each month i.e. Rs.21,639/- for the month of March 2017, Rs.12,689/- for the month of April 2017, and Rs.3,000/- for the month of May 2017. Therefore, it *prima facie* appears that, besides the gross pay, the claimant was receiving variable incentives, which were not fixed. The claimant has not brought on record any evidence to establish that he was receiving a specific amount of incentives throughout the year.

13. The learned Tribunal passed the impugned judgment and award and granted compensation under the heads of medical expenses, conveyance,

attendant charges, special diet, pain and suffering, loss of amenities of life, hardship etc. Besides this, the claimant examined PW-5 Dr. Rakeshkumar s/o Ramswarup, who has given an estimate (Exh.42A) in respect of the artificial limb. However, the claimant has not brought any material on record to show that he has purchased the said artificial limb. The quotation (Exh.42A) appears to have been issued on 10/01/2022, much prior to the filing of the affidavit (Exh.18) by the claimant. The claimant has not placed on record any material to show that he has incurred said expenditure. However, considering the necessity of an artificial limb and future expenses which may incurred by the claimant it would be just and proper to assess the cost of Artificial Limb to the tune of Rs.5,00,000/-. Therefore, on the basis of the average incentive amount as well as fixed monthly income drawn by the claimant, the compensation can be determined as under:

S.N.	Particulars	Amount in Rs.
a.	Salary (Rs.8,656/- x 12)	Rs. 1,03,872.00
b.	Multiplier of 16 (Rs.1,03,872 x 16)	Rs.16,61,952.00
c.	Future Prospects 40%	Rs. 6,64,780.00
d.	Functional Disability 80% (i.e. Rs.16,61,952 x 80% = Rs.13,29,561 + Rs,6,64,780 = Rs.19,94,342)	Rs.19,94,342.00
e.	Medical Expenses	Rs. 18,072.00
f.	Conveyance, Attendant Charges, Special Diet etc.	Rs. 40,000.00
g.	Pain and suffering	Rs. 40,000.00
h.	Loss of amenities of Life	Rs. 70,000.00
i.	Artificial Limb	Rs. 5,00,000.00
	Total Compensation (d+e+f+g+h+i)	**Rs.26,62,414.00**

14. Therefore, considering the evidence available on record, this Court is of the view that respondent No.1–claimant is entitled to receive compensation to the tune of Rs.**26,62,414/-** under all the heads. However, the learned Tribunal has granted exorbitant compensation of Rs.33,93,672/-, which is not justifiable. Therefore, the impugned judgment and award needs to be modified. Accordingly, I proceed to pass the following order:

O R D E R

I. First Appeal No.573/2024 is hereby partly allowed. Cross Appeal Stamp No.2069/2026 is dismissed.

II. The impugned judgment and award dated 16/06/2023 passed in Claim Petition No.842/2017 by the learned Member, M.A.C.T., Nagpur is hereby quashed and set aside to the extent of compensation and is modified accordingly.

III. Respondent No.1–claimant is entitled to receive total compensation of Rs.**26,62,414/-.**

IV. The appellant and respondent No.2–owner of the tractor are jointly and severally liable to pay the said compensation of Rs.**26,62,414/-** to respondent No.1–claimant with interest at the rate of 7.5% per annum from the date of the claim petition till its realization.

V. In pursuance of the order dated 01/12/2023, the appellant–Insurance Company had deposited an amount of Rs.49,60,499/- with the Registry of this Court on 07/03/2024. This Court had permitted respondent No.1–claimant to withdraw 50% of the said amount on furnishing an undertaking.

VI. Since respondent No.1–claimant is held entitled to receive total compensation of Rs.**26,62,414/-** with interest at the rate of 7.5% per annum from the date of institution of the claim petition till its realization, the excess amount, after adjusting the compensation with accrued interest, shall be refunded to the appellant/Insurance Company within a period of two months.

VII. The record and proceedings be remitted back to the trial Court.

VIII. Decree be drawn up accordingly.

(Y.G. Khobragade, J.)

**sandesh*

Signed by: Mr. Sandesh Waghmare
Designation: PS To Honourable Judge
Date: 29/04/2026 19:38:49