

**(2023) 07 BOM CK 0051**  
**In the Bombay High Court**  
**Case No : First Appeal No. 1208 Of 2014**

Sanjay

APPELLANT

Vs

Rajendra And Others

RESPONDENT

**Date of Decision :** 17-07-2023

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (2023) 07 BOM CK 0051

**Hon'ble Judges :** S.G. Chapalgaonkar, J

**Bench :** Single Bench

**Advocate :** C.K. Shinde

**Final Decision :** Partly Allowed

## Judgement

S.G. Chapalgaonkar, J

1. The appellant/original claimant impugns the judgment and award passed by the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar in MACP No.114 of 2011 in this appeal, filed under section 173 of the Motor Vehicles Act.
2. The claimant contends that on 1.2.2011 while he was proceeding on motorcycle, a Car bearing registration No.MH-17/AE-693 gave dash to his motorcycle. He suffered injuries in said accident. Although he was treated at Pravara Medical Trust Hospital, Loni, he suffered permanent disablement of 85%. However, the Tribunal passed impugned award granting meager compensation.
3. Notice of this appeal was served upon the respondents. However, none appeared. Even, after admission of the appeal, the notice is served upon the respondents. However, they failed to cause appearance.
4. By order dated 20.2.2023, this appeal was fixed for final hearing.
5. Mr. Shinde, learned counsel appearing for the appellant vehemently submits that the appellant was aged about 31 years at the time of accident. He was working as mason and earning daily wages of Rs.300/-. He would submit that

the claimant suffered amputation on right leg and fingers of the palm. He was indoor patient for more than four months and suffered permanent disablement of 85%. Mr. Shinde, would invite attention of this Court to the evidence of Dr. Ashish Somani CW 2 who certified permanent disablement. He would submit that the compensation awarded by the Tribunal is highly inadequate.

6. Having considered the submissions advanced and perusal of the record, it can be gathered that in an accident dated 1.2.2011 the claimant has suffered injuries. Evidence of Dr. Ashish Somani at exhibit 34 shows that right leg of the claimant has been amputated above the knee. Further, the radius of right hand is malunited. The fingers of right palm are amputated and left collarbone is malunited. The Permanent Disability is assessed to 85%.

7. The police papers show that the accident was reported to the police and the offence was registered against the car driver. Respondents have not controverted the contents of documentary evidence. Pertinently, exhibit 46 on record of the Tribunal shows that the car driver Sunil Bomble was charge-sheeted and prosecuted for rash and negligent driving. In that view of the matter, no negligence can be attributed against the claimant. The entire responsibility of the accident is attributable against the car driver. The findings recorded by the Tribunal on the point of negligence holds the claimant contributor to the extent of 25% in the cause of the accident, however, such finding sans the reasons. The Tribunal erred in recording such findings merely because such case was advanced on behalf of the respondent. There is no evidence to attribute negligence against claimant in the cause of the accident. Therefore, the findings on the point of contributory negligence cannot be sustained. Eventually, car driver must be held sole responsible for the accident.

8. So far as quantum of the compensation is concerned, the Tribunal considered notional income of the claimant @ Rs.3,000/- p.m. Although, the claimant contends that he was getting Rs.20,000/- p.m. and relies on evidence of CW-3 Santosh Shirsath, Tribunal discarded his testimony as no supporting documents regarding disbursement of the wages were produced. It is difficult to find fault with the approach of the Tribunal in fixing the notional income of the claimant @ Rs.3,000/- p.m. However, the Tribunal could have considered the future prospects @ 40% of his income.

9. The Tribunal considered 60% loss of earning to the claimant on account of permanent disablement. However, if disability of claimant is considered from perspective of labour, his loss of earning will have to be considered to be 100%. The Tribunal awarded Rs.20,000/- towards non-pecuniary heads like mental torture and agony, transportation, special diet but completely missed various components that requires to be taken into consideration while assessing the compensation in the cases of permanent disablement. The Supreme Court of India in the matter of R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd., reported in 1995 (1) SCC 551 laid down broader heads to be considered while fixing the amount of compensation payable to the victim of an accident. It is trite that the

damages will have to be assessed separately as pecuniary damages and special damages. In that view of the matter, the claimant would be entitled for compensation towards future medical expenses, attendant, mental and physical shock, pains and sufferings, loss of amenities in life, loss of expectation of life, inconvenience, hardship, discomfort, disappointment and permanent disablement.

9. In view of the aforesaid observations, the compensation amount can be re-assessed in the tabular form as under : -

Sr.No.

Heads

Amount(Rs.)

1.

Annual loss of earning Rs.3,000 x 12 =

Rs.36,000/-

2.

Addition of 40% towards future prospectus (36,000 + 14,400 )

Rs.50,400

3.

Future loss of earning after applying multiplier of 16' (Rs.50,400 x 16)

Rs.8,06,400 /-

4.

Permanent disablement

Rs.3,00,000/-

5.

Loss of amenities - expectation of life

Rs.1,00,000/-

6.

Pain and sufferings

Rs.1,00,000/-

7.

Special Diet and attendant charges

Rs.1,00,000/-

8.

Medical Bills

Rs.40,00 0/-

9.

Future medical expenses and transportation

Rs.2,00 ,0 00/-

TOTAL

Rs.16,46,400 /-

10. In that view of the matter, the appeal needs to be partly allowed and the award passed by the Tribunal needs to be modified. Hence, the order.

ORDER

i. The appeal is partly allowed.

ii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.16,46,400/- (Rs. Sixteen Lakh Forty-Six Thousand four hundred only) inclusive of 'NFL' along with the interest @ 7.5% p.a. from the date of filing of the claim petition.

iii. The compensation amount paid/dispensed in terms of the award passed by the Tribunal be appropriated.

iv. Award be drawn up on payment of deficit court fees.

v. On deposit of amount as per this award, it be dispensed to claimant.

Vi. Pending civil application, if any, stands disposed off.