**(2017) 11 BOM CK 0073**

**In the Bombay High Court**

**Case No :** 678 of 2006

Santosh s/o. Nandlal Agrawal — APPELLANT

Vs

Bhimrao Ramrao Thakur, & Ors. — RESPONDENT

**Date of Decision :** 14-11-2017

**Acts Referred:**

<a href=2221>Motor Vehicles Act, 1988</a>, <a href=2221-166>Section 166</a>, <a href=15711-166>Section 166</a>, <a href=2221-140>Section 140</a>, <a href=15711-140>Section 140</a> - Application for compensation - Liability to pay compensation in certa

**Citation :** (2017) 11 BOM CK 0073

**Hon'ble Judges :** S.B. Shukre

**Bench :** SINGLE BENCH

**Advocate :** C.A. Joshi, S.N. Dhanagare

**Final Decision :** Allowed

# Judgement

1. This appeal questions legality and correctness of the judgment and order dated 24.4.2006, delivered by the Chairman, Motor Accident Claims Tribunal, Akola in Motor Accident Claim Petition No.253/2002 insofar as quantum of compensation is concerned.

2. This is a injury claim filed under Section 166 of the Motor Vehicles Act by the appellant against the respondents. The accident in this case occurred on 13.1.2002 and at that time the appellant was aged about 34 years and earning income of Rs.52,000/to Rs.53,000/annually from his business of book agency, insurance agency and allied businesses. He was then resident of Murtizapur, District Akola and had come to Nagpur. On the fateful day, he hired an autorickshaw bearing registration No.MH31AP/ 1811 for proceeding to railway station Nagpur. When the autorickshaw came near G.P.O. square, one truck bearing registration No.MH31W/ 3448 came across and dashed against the autorickshaw. In this accident, the appellant suffered serious injuries to his head, chest, abdomen and left leg including fracture to the bone of left leg. He was

admitted to the hospital on the same day and received treatment as an indoor patient till 28.1.2002. According to him, the accident occurred mainly because of the rash and negligent driving of the driver of the offending truck and also to some extent because of the rashness shown by the driver of the autorickshaw. At that time, the offending truck was driven and owned by and insured with the respondent Nos.1 to 3 respectively and the autorickshaw was driven and owned by and insured with respondent Nos.4,5 and 6 respectively.

3. In the claim petition, all the respondents were duly served with the notice. However, they remained absent except respondent No.3 and respondent No.6, the two insurance companies, who resisted the claim petition by filing their respective written statements. They blamed driver of the other vehicle for the accident. On merits of the case, the Tribunal found that the drivers of both the vehicles were negligent and responsible for causing of the accident and apportioned their composite negligence in the proportion of 60% to 40% for the offending truck and offending autorickshaw respectively. The Tribunal quantified the compensation payable in this proportion jointly and severally by the driver, owner and insurer of the respective vehicles to the appellant to be at Rs.1,56,700/inclusive of claim under Section 140 of the Motor Vehicles Act, 1988 together with interest at the rate of 7.5% p.a. from the date of petition till actual realization, by the impugned judgment and order. Not being satisfied with the same, the appellantoriginal claimant is before this Court in the present appeal.

4. I have heard Shri C.A. Joshi, learned counsel for the appellant and Shri S.N. Dhanagare, learned counsel for the respondent No.6. Nobody appears for respondent Nos.1 to 5. I have also gone through the record of the case including the impugned judgment and order.

5. Now, the only point which arises for my determination is :

Whether the compensation awarded by the Tribunal is just and proper ?

6. In the present case, the only challenge made by the appellant is about the quantum of compensation. Learned counsel for the appellant submits that the compensation awarded by the Tribunal is inadequate for the reason that the Tribunal has not awarded any compensation under the head of loss of future earning capacity and has awarded meager compensation under the heads of loss of amenities of life, pain and agony etc. According to him, there is evidence to show that the earning capacity of the appellant has been reduced after the accident and such reduction is matching with the percentage of disability permanently suffered by him.

7. Learned counsel for respondent No.6 supports the impugned judgment and order submitting that all finer aspects of the case have been appropriately considered by the Tribunal leaving no scope for making any interference with the impugned judgment and order.

8. About suffering of the permanent disability to the extent of 10% by the

appellant, I must say that evidence of PW 3 Dr. Ranjeet Patil is clear and trustworthy. There is nothing in his evidence to enable this Court to discard his version regarding suffering of permanent disability by the appellant to the extent of 10%. He has asserted in his evidence that this appellant suffered 10% of permanent disability and in the crossexamination taken on behalf of the insurance companies, one can see, this has not been disputed in any manner by the insurance company. Therefore, it can be safely taken that the appellant in the present case suffered permanent disability to the extent of 10%.

9. Now, the question would be, whether such permanent disability did have or did not have any adverse impact on his earning capacity. Here also, the evidence of PW 1, the appellant himself would provide the answer. He has categorically stated in his evidence that his earning capacity was affected after suffering of the permanent disability. Of course, this has been sought to be disputed by the insurance company. But, one can very well say on the basis of common experience that a person who carries on the agency business and also sundry businesses like the appellant, would face certain difficulties in carrying on his such businesses with same efficiency as he did prior to the accident. For efficiently carrying on such businesses, the person is required to walk from one place to another, approach different persons for selling of his products and is also required to contact personally or on phone the other traders from whom he would be procuring his raw material. Therefore, some decline in the earning capacity in such a case is bound to be there, which reduction, may not be experienced by a salaried person, who performs his job while sitting in a chair during office hours. In the case of Sandeep Khanuja vs. Atul Dande and another, reported in 2017 (4) Mh.L.J 1, it is held that a person who is required to carry out free movement of his limb in order to perform his job or carry on his business may not be able to match the earning in comparison with the one who is healthy and bodily abled and, therefore, there would be an adverse impact on his earning capacity. It is also held that this may not be so in case of a person who is supposed to do sitting work. These observations of the Hon''ble Apex Court, in my humble opinion, squarely apply to the facts of the instant case. Therefore, I find that the suffering of the permanent disability in the present case by the appellant has impaired to some extent his earning capacity.

10. The question that falls for consideration now is, to what extent future earning capacity of the appellant has been affected because of the permanent disability suffered by him ? The permanent disability of the appellant is of 10% and considering the nature of businesses carried on by the appellant, I am of the view that decline in his capacity to carry on his businesses with same vigor and efficiency would be matching with the percentage of his permanent disability. So, 10% loss in future earning capacity can be safely taken to be established by the appellant in the present case, which I do so.

11. The evidence of PW 6 Sunil Agrawal shows that the appellant was earning annually Rs.52,000/to Rs.53,000/. This annual income has also been accepted by

 

the Tribunal. The lowest of it is of Rs.52,000/which when converted into monthly income, comes to Rs.4,330/. So, loss of future earning capacity could be quantified to be at Rs.83,136/( being 10% of Rs.4330/, Rs.433/X 12=5,196 X 16= 83,136) using ''16'' multiplier.

12. In addition to above amount, the appellant would also be entitled to receive some higher compensation under the heads of pain, suffering and agony etc. and loss of amenities of life which could be reasonably quantified to be at Rs.50,000/ and Rs.25,000/respectively. The appellant would also be entitled to receive compensation under the heads of medicare and hospitalization conveyance, loss of earning during treatment period, which have been already granted by the Tribunal to be at Rs.1,02,965/, Rs. 3,375/and Rs.17,000/respectively and rightly so. Thus, calculated, the appellant would be entitled to receive total compensation in the following manner :

Loss of earning capacity  Rs. 83,136/

Medicare and hospitalization expenses  Rs.1,02,965/

Conveyance expenses  Rs. 3,375/

Loss of earning during interregnum  Rs. 17,000/

Add : for Special diet  Rs. 3,360/

Towards pain, suffering and agony  Rs. 50,000/

Towards loss of amenities of life  Rs. 25,000/

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Rs. 2,84,836/

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Thus, the appellant would be entitled to receive compensation of Rs.2,84,836/in total.

13. This compensation would be payable along with interest at the rate of 7.5% p.a. from the date of petition till realization and in the same proportion by driver, owner and insurer of the two vehicles as has been fixed by the Tribunal jointly and severally in between themselves. The point is answered accordingly.

14. The appeal is partly allowed.

15. The impugned judgment and order stand modified in the above terms.

16. The appeal is disposed of in above terms.

 