

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.707 OF 2006
WITH
CROSS OBJECTION (ST) NO.27253 OF 2019**

The State of Maharashtra	}	
(At the instance of the Executive	}	
Engineer), Quality Control Division	}	
No.2, Satara	}	...Appellant

NILAM
SANTOSH
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Date: 2023.03.24
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Versus

1. Shri.Bapu Kesu Nikam	}	
R/o. Apshinge, Tal. Satara, District-	}	
Satara.	}	
2. Shankar Chandru Patil	}	
R/o. Malewadi, Post.Tandulwadi,	}	
Taluka-Walva, District-Sangli.	}	...Respondents

Mr.A.R. Patil, AGP, for the Applicant-State.
Mr.Dilip Bodake a/w Ms.Shraddha Pawar, for Respondent No.1.
Mr.Rajesh Parab, for Respondent No.2.

CORAM : S.G. DIGE, J.

DATE : 10 MARCH 2023

JUDGMENT :-

. The issues involved in this Appeal are the income of the Claimant considered on higher side and compensation awarded under other heads.

2. It is contention of the learned counsel for the Appellant that the Claimant was Watchmen in a Sugar Factory and he was on contract basis. But the Tribunal has considered his income at Rs.5,000/- per month and has awarded loss of earning. Infact while determining the said earning loss, the learned Tribunal failed to take into account that the Claimant was not in permanent service, he was on contract basis.

3. The learned counsel further submits that the Tribunal has awarded Rs.10,000/- towards pain and suffering and Rs.5,000/- towards traveling expenses, besides this Rs.10,000/- towards for loss of his enjoyment of life, these compensation is excessive compared to disability of 10% suffered by the Claimant. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondent-Claimant submits that the Claimant was Watchmen. He was earning Rs.5,000/- per month. After the accident due to injuries his leg is shortened. The said fact is proved before the Tribunal by evidence of Doctor. After the accident when the Claimant joined the service his salary is reduced to Rs.2,500/- per month, because of his physical incapacity. The learned counsel further submits that the Tribunal has not awarded loss of earning for two years and loss of future earning for 10 years it be awarded. The learned counsel for the Appellant submits that this Appeal is preferred by

the Appellant against the impugned order. In the Appeal filed by the Appellant the Respondent-Claimant cannot claim enhancement of compensation. They should have filed Cross Objection for it.

5. The learned counsel further submit's that the Claimant has preferred Cross objection but there is delay of 13 years for filing Cross Objection, hence, it was not registered.

6. The learned counsel for the Respondent-Claimant submits that due to poor condition and lack of knowledge the Claimant could not prefer Cross Objection within reasonable time.

7. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short 'the Tribunal').

8. It is contention of the learned counsel for the Appellant that the Tribunal has awarded exorbitant and excessive compensation when Claimant was serving as Watchmen in Sugar Factory on sessional basis.

9. The Claimant has examined himself at Exhibit-41. He has stated that due to accidental injuries his leg is shortened.

He took the treatment for accidental injuries for about two years. Due to accidental injuries he could not attend the service for two years and for this period the Appellant had not paid salary to him. Due to accident he sustained permanent disability which has affected to his salary as watchmen and now employer pay him salary of Rs.2,500/- per month. Earlier he was getting monthly salary of Rs.5,000/- per month. His 12 years service still remained. Nothing elicited in his cross-examination. To prove disability of Claimant Dr.Satish Barge has examined at Exhibit-64. He has stated that he examined the Claimant and he found that due to injuries, right leg of the Claimant is shortened. The Disability Certificate is at Exhibit-65. There is no cross-examination on the point of shortening of leg of the Claimant to this witness.

10. From the evidence of these witnesses, it reveals that due to accidental injuries the right leg of the Claimant is shortened. Admittedly, he was in the service of Sugar Factory. Before the accident he was getting salary of Rs.5,000/- per month and after accident for two years he was not in service and thereafter, when he joined the service he was receiving amount of Rs.2,500/- salary per month. It shows that due to accidental injuries there is effect on the body and salary of the Claimant. The Tribunal has awarded Rs.1,16,000/- as compensation to the Claimant. The Tribunal has not considered loss of earning for

two years and amount towards medical expenses of Rs.45,000/-. It is contention of learned counsel for the Appellant that the Claimant was sessional worker of Sugar Factory. In my view, when it has come on record that the Claimant was working as a watchmen and after the accident he had joined services so it cannot be termed as sessional worker as he was working as a watchmen. Hence, I am considering two years salary of the Claimant. He was getting salary of Rs.5,000/- per month, for two years salary comes to Rs.1,20,000/-. The Tribunal has not considered future earning of the Claimant. After the accident the Claimant was getting Rs.2,500/- instead of Rs.5,000/-. Hence, I am considering Rs.2,500/- per month for 10 years, the period which the Claimant's service still remain from the date of the accident, it comes to Rs.3,00,000/-. The Tribunal has awarded amount Rs.10,000/- for pain and suffering. I am considering it Rs.25,000/-, as leg of the Claimant is shortened and Rs.45,000/- for medical expenses.

11. It is contention of the learned counsel for the Appellant that without Cross-Objection enhancement cannot be granted. In my view, it is settled principle of law that the Claimants are entitled for just compensation. In the present case due to accidental injuries the Claimants leg is shortened. He was doing work of watchmen. He has filed Cross-objection. It is on record, but due to delay it is not registered. It

shows that efforts are taken by the Claimant for filing the Application for enhancement of compensation. In view of above calculations the Claimants are entitled for Rs.4,90,000/-. The Tribunal has awarded amount of Rs.1,16,000/-, if this amount deducts from it, it comes to Rs.3,74,000/-. The Claimant is entitled for this amount.

12. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimant is entitled for enhanced amount of Rs.3,74,000/- @ 7.5 interest per annum from the date of the filing of the Application, till realization of the amount.
- (iii) The Appellant is directed to deposit the enhanced amount alongwith interest within 10 weeks after receipt of the order.
- (iv) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.
- (v) In view of dismissal of the Appeal, the Cross Objection is disposed of.
- (vii) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)