

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.236 OF 2014

Rajendra s/o Sudhakar Padalkar,
Age: 50 years, Occ: Advocate's Clerk,
R/o. N-9, H-54/2, HUDCO,
Shrikrishna Nagar, Aurangabad. ...Appellant

versus

1. Sanjay s/o Bhikaji Kale,
Age: 28 years, Occ: Driver,
R/o. Janephal, Tq. Mehekar,
Dist. Buldhana.
2. Yogendra s/o Rajendra Gode,
Age Major, Occ: Business,
R/o. Dr. Rajendra Gode House,
Chikhali Road, Buldhana,
Tq. & Dist. Buldhana.
3. The Divisional Manager,
ICICI Lombard Insurance Company Ltd.,
Through its Divisional Office at
Aurangabad. ...Respondents

.....
Mr. M.M. Joshi, Advocate for appellant
Mr. V.N. Upadhye, Advocate for respondent No. 3
.....

CORAM : N.W. SAMBRE, J.

DATE : 8th JULY, 2015

ORAL ORDER :

The appellant herein, who on the date of accident, claimed to have of the age of 45 years, preferred present appeal,

seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.846 of 2007 on 11/11/2010. The claims tribunal has awarded Rs.59,000/- on the principle of fault and awarded interest @ 9% p.a.

2. The appellant herein claimed that at the relevant time, he was working as registered Clerk with Advocate since 1998 and was holding permission to that effect from Deputy Registrar (Adm) of High Court and has produced documents in support thereof in the evidence. He would further urge that he was earning additional amount by doing typing job, in addition to work as Agent of Insurance Company. According to learned Counsel for the appellant, in support of claim petition, I.T. returns were produced, which were ignored by the tribunal while awarding compensation. He would urge that the claim should have been allowed by the tribunal based on monthly income of Rs.15,000/- against which, the tribunal has considered meager income of Rs.3000/- per month.

3. Mr. Upadhye, learned Counsel for respondent Insurance Company strenuously opposed the claim petition put forth by the appellant on the ground that the documents which were placed on record were not original. Apart from above, he would urge that the

income tax returns produced in support thereof in the evidence were post accident and as such, rightly ignored by the tribunal. He would urge that no independent witness in support of income of the appellant was examined by him and as such, the tribunal was right in considering the income of the appellant as Rs. 3000/- per month.

4. Having considered the contentions of the parties and analyzing the evidence that was brought on record, it is noticed that the tribunal has presumed the income of present appellant at Rs.3000/- per month i.e. Rs.100/- per day. It is required to be noted that the appellant herein was working as registered Clerk with Lawyer in High Court from 05/11/1998 and in support thereof, document of registration as recognized Clerk was produced by him on record. There was no cross to the said document, even if the document was not produced in original and Insurance Company accepted the said piece of evidence.

5. Once it is noticed that the appellant, who at the relevant time, was at the age of 45 years and was working in High Court since 05/11/1998 as registered Clerk of Lawyer, it will be really hard to believe that he was earning just Rs.100/- per day.

6. It is regular practice in Advocate's office that his Clerk does typing job. The said case was also sought to be put forth by present appellant, which was not discussed by the tribunal.

7. In view of above, in my opinion, the appeal at the behest of present appellant, is required to be allowed considering the monthly income of appellant to the tune of Rs.6000/- per month.

8. As a consequences of above, the appellant herein will be entitled for enhanced compensation of additional Rs.50,000/- (Rs. Fifty thousand only), which shall not carry any interest. The appeal is partly allowed to above extent.

[N.W. SAMBRE, J.]