

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

FIRST APPEAL NO.291 OF 2004

Tarachand Shivilal Pardeshi	..Applicant
Vs.	
Eknath Bandu Sonavane & Anr.	..Respondents

Mr. Chintan Shah i/b Mr. Sandesh D. Patil for the Applicant.
None for the Respondents.

CORAM: C. V. BHADANG, J.

DATE: May 23, 2017.

ORAL JUDGMENT:

1) By this appeal, the Appellant, (original claimant), is seeking enhancement of compensation. The Motor Accident Claims Tribunal ('Tribunal', for short) has granted compensation of Rs.59,450/- along with interest at 6 % p.a.

2. The Appellant claims to have suffered fracture to the right hand and suffered permanent partial disability to the extent of 10%. The Appellant was working as a fitter and was earning Rs.3,500 p.m. A certificate (Exh.32) from the employer M/s. Janak Engineering was produced before the Tribunal. The Tribunal refused to place reliance on the said certificate on the ground that the Proprietor of M/s. Janak Engineering, was not examined. The Tribunal further noticed that even going by the said certificate the Appellant was earning maximum of Rs.2,500/-p.m.

3. The Tribunal has noted that in the absence of evidence on the count of the wages earned, a notional income of Rs.15,000/-per annum i.e. 1250 p.m. has to be taken. The Tribunal applied 12 as the multiplier. The Tribunal awarded Rs.5,185/- as expenses incurred on the treatment, in the hospital and Rs.2,015, as expenses for purchase of medicines. These two claims are granted as claimed by the Appellant. In so far as the traveling expenses are concerned, the Tribunal has granted Rs.1,000/- against a claim of Rs.2500/- The Tribunal awarded Rs.15,000/- towards compensation for mental pain and suffering against the claim of Rs.25,000/- The appellant had made a claim of Rs.20,000 towards expenses for future treatment however the Appellate Tribunal awarded Rs.10,000/- towards “constant pain and suffering” and refused to award any compensation on the actual loss of income for two years. The Tribunal found that there is no evidence to show that the Appellant was jobless for a period of 2 years. The Tribunal also awarded one month's wages for the period during which the Appellant was hospitalized. Thus, the Tribunal arrived at a total compensation of Rs.59,450/-.

4. The learned counsel for the Appellant submits that the Tribunal ought to have reckoned the monthly wages atleast at Rs.2,500/- as shown in the certificate (Exh.32). The Tribunal ought to have applied multiplier of 17 and ought to have awarded compensation under the head of actual loss of earning for two years. Lastly, it is submitted that the interest is awarded at a lower rate.

5. None appears for the Respondent.

6. I have carefully considered the submissions and gone through the record.

7. Under the provisions of the Motor Vehicles Act, the Tribunal is required to assess and grant just and reasonable compensation. Strict rules of procedure or evidence do not apply to proceedings before the Tribunal.

8. As noticed earlier, the Tribunal has awarded Rs.5,185/- as expenses incurred on the treatment in the hospital and Rs.2,015/- as expenses for purchase of medicines. Both these claims are granted as claimed by the appellant. In so far as the travelling expenses are concerned, the Tribunal has awarded Rs.1000/- against a claim of Rs.2,500/-. I find that the appellant was residing at Bhivandi and was taking treatment in the hospital at Mumbai and considering the over all circumstances claim of Rs.2,500/- towards travelling expenses cannot be said to be unreasonable. Thus, I am inclined to grant said expenses of Rs.2,500/-. Here there would be an increase of Rs.1000/- in the total compensation awarded. The compensation awarded by the Tribunal is Rs.59,450/- i.e. Rs.60,000/-. Together with increase of Rs.1000/- in the compensation towards expenses on conveyance, the compensation would come to Rs.61,000/-. The Tribunal has not awarded any compensation towards the actual loss of earning for the period of treatment. Even considering the modest

monthly income Rs.2000/- and the nature of injuries, compensation for two months i.e. Rs.4000/- can be awarded towards actual loss of earning. It is well settled that assessment of compensation involves certain amount of reasonable guess work which is inevitable. Considering the over all circumstances I find that a compensation of Rs.65,000/- would be just and reasonable. In the result, the appeal is partly allowed. The impugned award is modified to the extent that the compensation payable would be Rs.65,000/-. The rest of the award including the interest awarded is maintained. In the circumstances, there shall be no order as to costs.

(C. V. BHADANG, J.)