

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

**FIRST APPEAL NO. 1190 OF 2011**

Bhausahab Yadav Mandare  
Age 52 years, Occ. Agriculture,  
R/o Hanumantgaon, Tq. Rahata,  
Dist. Ahmednagar

**... Appellant**  
[Original Appellant]

**Versus**

1) The Branch Manager  
United India Insurance Company Ltd.,  
Branch Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar

2) Shri Sharad M. More } Dismissed as per  
Age: 50 Years, occ: Business, } Registrar's order  
R/o At Post Shinde, } dated 30.10.2012  
Tq. & Dist. Nashik }

3) Suresh Shamrao Patil  
Age: 51 years, Occ: Driver,  
R/o Audumbarnagar,  
Panchavati, Nashik,  
Dist. Nashik

**... Respondents**  
[Original Opponents]

....

Mr. V. H. Dighe, Advocate for appellant  
Mr. A. B. Gatne, Advocate for respondent No.1  
Mr. C. V. Bhadane, Advocate for respondent No.3

....

**CORAM : R. G. AVACHAT, J.**

**DATED : 06<sup>th</sup> DECEMBER, 2021**

**ORDER :-**

. This is an appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal (Tribunal), Shrirampur, on account of injuries and permanent disability suffered in vehicular accident. The appellant herein is the original claimant in M.A.C.P No.24 of 2003. Under the impugned judgment and award, he has been granted compensation of Rs.62,200/- with interest at the rate 7% per annum from the date of petition to the date of realization of the amount. The appellant feels to have been inadequately compensated and has, therefore, preferred the present appeal.

It was an accident between a Tata-Sumo (MH-15-K-5749) and M-80 moped (MH-1-D-286) plied by the appellant herein. The appellant was on his way to his workplace – Pravara Sahakari Sakhar Karkhana, on 16.11.2002. It was about 6.30 p.m., the appellant took right turn and was crossing Loni - Kolhar road, the Tata Sumo MH-15-K-5749 knocked down the appellant. As a result thereof, he suffered multiple injuries. He, therefore, preferred claim petition for compensation. The Tribunal held it to be a case of contributory negligence in proportion of 10 : 90 between the

petitioner and the driver of the Tata Sumo. Since neither the driver, owner or the insurer of the Tata Suma has preferred any appeal, the said findings so far as regards holding the driver of the Tata Suma, to be negligent to the extent of 90% has attained finality.

2. The Tribunal did not rely on the disability certificate (Exh-48), wherein the appellant is shown to have suffered 50% disability. The Tribunal held the appellant to have suffered disability of 15% only and granted compensation as under:

- |                                                            |                |
|------------------------------------------------------------|----------------|
| (i) For permanent disability                               | - Rs. 15,000/- |
| (ii) Medical bills                                         | - Rs. 11,180/- |
| (iii) Purchase of medicines                                | - Rs. 05,000/- |
| (iv) Loss of salary for three months                       | - Rs. 21,000/- |
| (v) Special diet, pain and sufferings, transportation etc. | - Rs. 05,000/- |

The Tribunal worked out an amount of Rs.68,000/- and after deducting 10% therefrom towards contributory negligence, granted compensation of Rs.62,200/-.

3. The learned Advocate for the appellant would submit that it was exclusive negligence on the part of Tata Sumo driver. The appellant underwent 2 – 3 operations. He has, in fact, suffered 50% of disability. The Tribunal therefore ought to have granted the claim in toto. He, therefore, urged for allowing the appeal.

4. The learned Advocate for the respondent – Insurance Company would, on the other hand, submit that just and reasonable compensation has been awarded. Therefore, interference with the impugned award is unwarranted.

5. Considered the submissions advanced. Perused the evidence relied on and impugned judgment, as well. The facts and evidence on record undoubtedly indicate that the petitioner took right turn and was crossing road without noticing the approaching Tata Sumo. The Tribunal, therefore, has rightly held him to be a contributory negligent (to the extent 10%).

6. Dr. Bhagwat Gangadhar Murade – witness No.2 was examined in proof of disability. The disability certificate Exh.48 indicates the appellant to have suffered shortening of leg. He was unable to bend the knee. It has also been in the evidence that there was re-fracture and the appellant was therefore required to be operated upon again. The fracture is, however, said to have reunited.

7. The Tribunal has rightly not relied on the percentage of disability, since it found that no x-ray was placed on record. The doctor did not give the details as to how he assessed percentage of disability. Be that as it may.

8. The facts indicate that the appellant suffered re-fracture. He was again required to be operated upon. He has spent about Rs.14,930/- towards medical expenditure for re-operation. The Tribunal has not granted this amount as compensation. In view of this Court, a meager sum of Rs.15,000/- has been awarded towards disability, instead of giving split up of the details. On account of which, this Court is inclined to enhance the compensation. Suffice it to say that the appellant deserves grant of additional sum of Rs.40,000/- as compensation on all counts. Needless to mention that there is no case of loss of earning capacity. The appellant has been serving as a driver. With this, the appeal partly succeeds in terms of following order.

### **ORDER**

- (i) The First appeal is partly allowed.
- (ii) The amount of compensation granted by the Tribunal is enhanced by Rs.40,000/-.
- (iii) Rest of the terms of the impugned award to stand unaltered.

[ R. G. AVACHAT, J. ]