

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

FIRST APPEAL NO.945 OF 2005

Chandrakant s/o. Bhavrao Patil,
Age : 26 years, Occ. Labour,
r/o. Baldane, Post Nihali,
Tq. and Dist. Nandurbar

..Appellant

Vs.

1. Tejendrasing s/o. Hambarsing Girase
Age : 30 years, Occ. Driver,
r/o. Devi, Tq. Sindkheda, Dist.Dhule
2. Rajeshsingh s/o. Gulabsing Girase,
Age : Adult, Occ. Matador owner,
r/o. Shevale, Tq. Sindkheda, Dist. Dhule
3. The National Insurance Co. Ltd.
Through its Branch Manager,
Nashikkar Shopping Complex,
Rana Pratap Chowk, Dhule

..Respondents

Mr.S.S.Wagh, Advocate (appointed) for appellant

Mr.C.C.Deshpande i/b. Mr.C.R.Deshpande, Advocate for respondent
no.1

Mr.S.P.Chapalgaonkar, Advocate for respondent no.3

**CORAM : R.G. AVACHAT, J.
DATE : DECEMBER 07, 2021**

JUDGMENT :-

This appeal has been filed by the claimant for
enhancement of compensation granted by the Motor Accident Claims

Tribunal, Dhule in Motor Accident Claim Petition No.594 of 2000, on account of injuries and permanent disability suffered by him.

2. It is an old appeal and learned counsel representing the appellant, remained consistently absent. This Court, therefore, appointed Mr.S.S.Wagh, learned counsel, to assist the Court in the matter. Needless to mention, it is the duty of the Court to grant a reasonable and just compensation to the victim of the motor accident.

3. Heard learned counsel appearing for the parties.

4. Mr.S.S.Wagh, learned counsel for the appellant, would submit that the appellant/claimant suffered 50% disability. The medical bills worth little over Rs.62,000/- were placed on record. The Tribunal still granted a sum of Rs.50,000/- inclusive of no fault liability, as compensation. According to him, the appellant was working on daily wages. As a result of the injuries suffered, he suffered loss of income and earning capacity as well. Learned counsel, therefore, urged for enhancement of compensation to the extent, prayed for in the petition.

5. Mr.S.P.Chapalgaonkar, learned counsel for respondent – insurance company, would, on the other hand, submit that the

medical bills have not been proved. The Doctor was not examined in proof of disability certificate. The amount of compensation granted by the Tribunal is just and reasonable in the facts and circumstances of the case. He, therefore, urged for dismissal of the appeal.

6. The appellant was proceeding on his moped (M-80). It was 01.06.2000 at about 08.00 p.m. A Matador coming from opposite side, knocked him down. The injury certificate (Exh.27) indicates him to have suffered following injuries :

- “1. CLW- left thigh near knee joint – 5 cm x 1 cm
2. Contusion- left knee joint 5 cm x 3 cm
3. Sutured wound-left eye brow 4 cm periorbital swelling

7. The disability certificate issued by the Civil Surgeon is placed on record at Exh.28. The Civil Surgeon opined it to be a case of 50% disability. He was, however, not examined in proof of the same. The disability certificate was issued six months after the accident. The certificate indicates that the appellant was indoor patient for one day only. The Tribunal has also observed thus:-

“.....the injury certificate produced on record vide Exh.27 and disability certificate vide Exh.28 do not show any fracture injury. Mere contusion and sutured wound is mentioned in it, X-ray plate not produced. So I fail to understand how Civil Surgeon, Dhule, has shown 50% permanent disability on the

basis of such minor injuries. Then it is bounden duty of the claimant to examine Dr. Hire, who has treated him for 1½ month. But the petitioner failed to do so. Because P.W.1 Chandrakant has stated in para 2 of Exh.23 that he has taken treatment of Dr. Hire of Dhule. He was admitted in the hospital of Dr. Hire for 1½ month. There operation took place and steel rod was inserted. He spend Rs.1,00,000/- for treatment. He has produced bills of Rs.64,673/- along with the list Exh.22. Then such type of heavy expenses is expected. Then it is bounden duty of claimant to examine Dr. Hire. But he has failed to do so. Hence I am unable to uphold this written argument on medical bills on record, which have no basis. No reliance can be placed on disability certificate Exh.28, in which there is no mention of any fracture and also the injury certificate Exh.27 but now statement of injured Chandrakant is there. Hence I believe his version that fracture injury caused to his left leg. Already N.F.L. amount of Rs.25,000/- is paid to him by the insurance company. Then he is entitled to Rs.25,000/- for loss of amenities, plus Rs.5,000/- for pains and sufferings, bills produced but not proved through Dr. Hire and hence Rs.15,000/- granted for medical expenses inclusive of special diet and conveyance plus Rs.5,000/- for loss of income during hospitalisation. Thus in all he is entitled to get Rs.50,000/-. Thus it goes without saying that the claim of Rs.2,00,000/- is without any basis and it is excessive one. The respondent nos.2 and 3 have already paid N.F.L. amount of Rs.25,000/-. After deducting that amount now they should pay the remaining amount of Rs.25,000/-”

8. This Court has no reason to interfere with the finding record by the Tribunal as regards failure on the part of the appellant to prove to have suffered 50% of disability. The fact, however, remains that the appellant suffered injuries, as noted above. There

are medical bills worth Rs.64,673/-. The Tribunal ought not to have discarded the medical bills merely for want of proof thereof. In the cross-examination of the appellant only, the bills worth Rs.40,000/- issued by the Doctor had been taken exception to. As noted above, the Tribunal has only granted Rs.15,000/- towards the medical expenditure inclusive of special diet and conveyance, etc.

9. After having considered the evidence in the case and the reasons given by the Tribunal in support of the impugned award, this Court is of the view that it is a fit case to grant a sum of Rs.45,000/- more, as compensation.

10. In the result, the appeal is partly allowed. The amount of compensation awarded by the Tribunal is enhanced by Rs.45,000/- (Rupees Forty Five Thousand). The enhanced amount of compensation to carry interest at the rate of 5% per annum from the date of the claim petition to the date of payment. The amount of compensation shall be deposited in this Court immediately. The amount, after payment of the fee of the appointed Advocate, be paid to the appellant immediately.

[R.G. AVACHAT, J.]

KBP