

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

FIRST APPEAL NO.102 OF 2007

Suresh s/o Panditrao Kolhe,
age 49 years, Occu. Service,
R/o Plot No.26, Ayodhya Nagar,
Jalgaon

... APPELLANT

VERSUS

1. Imran Khan s/o Mansoor Khan,
Age 43 years, Occu. Transport,
r/o Kathora, At Post Padalse,
Bharat Motor Carage, Bhiwandi,
District Thane.

2. The New India Assurance Co. Ltd.,
1st Floor, Mndore Market,
Near Ambedkar Market, Jalgaon

... RESPONDENTS

.....
Shri A.M. Gholap, Advocate for appellant
Shri M.M.Ambhore, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

DATE : 9th DECEMBER, 2021

ORDER :

This is an appeal for enhancement of compensation granted by Motor Accident Claims Tribunal, Jalgaon, on account of injuries and permanent disability suffered in a vehicular accident. A sum of Rs.1,71,500/- has been granted as compensation.

2. Heard. Learned counsel for the appellant would submit that, the claim was made for Rs.2,50,000/-. On the basis of evidence and calculations, the appellant was entitled for Rs.3,86,422/-. After deducting the amount awarded under the impugned award, still the appellant is entitled for Rs.1,78,500/-. Learned counsel would further submit that, later on the Civil Surgeon, Nasik assessed percentage of disability at 45. The Tribunal only considered it to 30% on the basis of earlier certificate. The appellant had to forgo one promotion and as such, he suffered a monetary loss of Rs.971/- per month. According to learned counsel, the amount of compensation awarded under other heads is meagre and, therefore, warrants enhancement as claimed. He, therefore, urged for allowing the appeal.

3. Learned counsel for the respondent Insurance Company would, on the other hand, submit that, just and reasonable compensation has been awarded. The Civil Surgeon is not competent to issue disability certificate. The certificate has also not been proved by examining the Civil Surgeon. According to learned counsel, a just and reasonable compensation has been awarded, calling for no interference with the impugned award.

4. Admittedly, it was an accident between a motorcycle plied by the appellant and the truck. The truck driver has been held responsible to the accident and resultant injuries suffered by the appellant. The respondent Insurance Company is not in appeal. As such, the said finding has attained finality. It is only a question of enhancement of compensation. The Tribunal has awarded compensation as under :

1	Loss of income	Rs.45,500/-
2	Medical expenses	Rs.26,000/-
3	Future medical expenses	Rs.45,000/-
4	Damages to the vehicle	Rs.15,000/-
5	Pain, suffering and mental agony	Rs.20,000/-
6	Attending charges	Rs.10,000/-
7	Special diet charges	Rs.10,000/-

5. As a result of the accident, the appellant – claimant suffered multiple injuries including shortening of his leg. He had to be on leave for little over five months. Although his employer (Bank) granted him leave with salary, the fact is that, he had to avail the leave of little over four months against his wish. As such, it is a case of loss of leave period. He could have availed that leave for other reasons as and when required. He could have kept the leave unavailed to encash by retirement. On this count, this Court is inclined

to grant him a compensation amounting to Rs.30,000/-. A further sum of Rs.15,000/- is awarded on account of loss of amenities in life. Post accident, the appellant continued in service and has now superannuated. As such, it is a case of no loss of earning capacity. It appears that, it is the appellant who refused the promotion. The fact is, however, that the appellant has retired from service as Assistant Manager. The same indicates that, after refusal of one promotion, for some time he came to be promoted. On that count, therefore, no amount of compensation is proposed to be granted. The amount of compensation awarded by the Tribunal, as stated above, needs no enhancement. In the result, the appeal partly succeeds. Hence the order :-

ORDER

- (i) The appeal is partly allowed with proportionate costs.
- (ii) The amount of compensation awarded by the Tribunal is enhanced by Rs.45,000/-, to be paid along with interest @ 6% p.a. from the date of claim petition to the date of payment.

**(R. G. AVACHAT)
JUDGE**

fmp/-