

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

FIRST APPEAL NO.730 OF 2010

Walmik s/o Ashroba Gite
Age 23 years, Occu. Agri. Labour
and Molk man, R/o Pimpri (Kh.),
Tq. Jintur, Dist. Parbhani

... APPELLANT

VERSUS

1. Ritesh s/o Kishor Chourasia,
Age major, Occu. Business,
R/o Sadar Bazar, Hingoli,
Tq. & Dist. Hingoli
2. United India Insurance Company
Ltd., through its Branch Officer,
at Parbhani, Taluka and
District Parbhani

... RESPONDENTS

.....
Shri S.R. Bagal, Advocate for appellant
Shri S.V. Kulkarni, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

DATE : 21st OCTOBER, 2021

ORAL JUDGMENT :

Heard. This is an appeal for enhancement of compensation granted by the Tribunal on account of injury and permanent disability suffered in the accident.

2. Heard. It was an accident between the

motorcycle and the jeep. The Tribunal quantified the amount of compensation at Rs.2,00,000/-. However, reduced the same by 50%, attributing the claimant contributory negligence in equal proportion. Learned counsel for the respondent Insurance Company reiterated the reasons given by the Tribunal in support of the impugned award. According to him, a just and reasonable compensation has been awarded by the Tribunal and there is, therefore, no need to interfere therewith.

3. Perusal of the evidence on record does indicate that, it is not known as to who was riding the motorbike. Learned counsel for the Insurance Company was also unable to refer to a particular piece of evidence that will attribute the claimant – appellant to be the rider of the vehicle at relevant time. The Tribunal simply relied on the scene of accident panchanama, which will indicate that the accident took place at the middle of the road, but for want of evidence that the appellant – claimant was riding the vehicle- motorbike involved in the accident, the Tribunal ought not to have attributed him with contributory negligence. The finding to that effect needs to be modified. As such, the compensation of Rs.2,00,000/- needs to be restored.

4. It also appears that, the claimant has not been awarded compensation towards pain and sufferings, traveling expenses, special diet etc. A consolidated sum of Rs.50,000/-, therefore, is awarded under this head. However, there is no evidence to suggest loss of earning capacity. No compensation under that head is, therefore, awarded. As such, the appellant- claimant is entitled to compensation of Rs.2,50,000/-.

5. In the result, the appeal succeeds. The amount of compensation awarded by the Tribunal is enhanced to Rs.2,50,000/-. Rest of the terms of the award to stand unaltered. The appeal stands disposed of.

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

fmp/-