

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

FIRST APPEAL NO. 755 OF 2004

Ajay Chandrakant Akade
Age : 36 years, Occ : Contractor,
R/o Near Employment Office,
Savadi, Ahmednagar.

.. APPELLANT

VERSUS

1. Manik Mahadeo Yadav
Age : Major, Occ : Driver,
R/o Vijora, Tq. Bhum,
Dist. Osmanabad.
2. Dr. Anil Jeevanrao Salunke
Age : Major, Occ : Owner,
R/o Tirupati Hospital,
Shivaji Chowk, Beed,
Dist. Beed.
3. National Insurance Co. Ltd.,
Through Branch Manager,
Ahmednagar.

.. RESPONDENTS

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Mr.R.K. Temkar, Advocate for the appellant.
Mr.D.R. Jaybhar, advocate for respondent nos.1 and 2.
Mr.S.V. Kulkarni, advocate for respondent no.3

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CORAM : S.G.DIGE, J.
DATE : 04.08.2022

JUDGMENT :

. Being aggrieved and dissatisfied with the

judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar, the appellant (original claimant) preferred this Appeal for enhancement of compensation.

2. Brief facts of the case are as under :-

On 2nd May, 1999, the appellant was proceeding on Bajaj Motorcycle along with his friend Sunil Eknath Pund towards Walavane. The appellant was ridding the motorcycle. When the appellant reached near Walavane locality, one Fiat Car bearing No.MH-24/C-2424 came from the opposite direction in high speed and gave dash to the motorcycle of the appellant. Due to which the appellant and his friend fell down and sustained fractures and several injuries. The appellant was shifted to Dual Hospital. The crime was registered against the driver of the Fiat Car for rash and negligent driving.

3. The appellant filed the Claim Petition for

getting compensation before the Member, Motor Accident Claims Tribunal (for short, “the Tribunal”). Considering the evidence led before the Tribunal and hearing the parties, the Tribunal has passed the judgment and order which is under challenge.

4. It is contention of the learned counsel for the appellant that the Tribunal has not properly considered the evidence on record regarding the annual income of the appellant. The income of the appellant was Rs.10,000/- per month. The appellant was admitted in the hospital for several days but the Tribunal has not considered the amounts spent on hospitalization. The Tribunal has relied upon the income tax returns of the appellant for the year 1997-98, however, has not considered the income. The Tribunal has wrongly saddled 40% responsibility of the accident on the rider of the motorcycle i.e. appellant. The appellant is entitled to get the claim interest at the rate of 12% per annum and not 9% per annum as granted by the Tribunal. Hence requested to allow the appeal.

5. It is the contention of the learned counsel for respondents that the Tribunal has considered all the facts and awarded just and proper compensation. The appellant had suffered 10% disability. Accordingly, on the basis of the evidence led by the appellant, the Tribunal has granted compensation. The judgment and award passed by the Tribunal is legal and valid.

6. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

7. The appellant is seeking enhancement on the grounds that (i) the income of the appellant is not properly considered by the Tribunal, (ii) there was no negligence on the part of the appellant and (iii) the appellant is entitled for interest @ 12%.

8. Firstly, I deal with the issue of income. The appellant has examined himself at Exhibit-28. He has stated

that he is Bachelor of Engineering (Civil) and taking contracts of building construction. He was earning Rs.15,000/- to Rs.20,000/- from his business. He has filed the copy of income tax returns for the year 1997-98. After the accident, he was advised to take rest for 3 to 4 months. He has sustained 10% disability in the said accident. In cross-examination suggestion was given to this witness that he was not earning Rs.15,000/- to Rs.20,000/- per month, this witness denied it. The Tribunal has observed that there are no documents filed on record to show that the appellant was getting Rs.15,000/- to Rs.20,000/- per month. Therefore, the Tribunal has considered Rs.5,000/- as monthly income of the appellant. In my view, when it has come on record that the appellant was contractor, he has filed income tax returns for the year 1997-98, he was possessing qualification of B.E. (Civil), when the person files income tax regarding his income, the Tribunal should not have considered the lessor income of Rs.5,000/- per month. The income tax returns show that annual income of the appellant was Rs.90,000/-, it comes to Rs.7500/- per

month. Hence, I am considering the income of the appellant as Rs.7,500/- per month.

9. In respect of the issue of negligence of the appellant, it appears from the record that the First Information Report was filed by the driver of the offending Car stating that the motorcycle rider hit their Car and damaged their Car. The Tribunal has observed that the spot panchanama shows that the road where the accident has taken place is east-west in direction. The spot panchanama does not show the actual spot where the accident has taken place. The panchanama shows that there was damage to both the vehicles as it was head on collision. The spot panchanama shows that the accident was occurred in middle of the road, hence the Tribunal has held the responsibility of the appellant as 40% and 60% of the Fiat driver. I do not find any infirmity in this observations.

10. The third contention of the learned counsel for the appellant is that the appellant is entitled to receive the

interest @ Rs.12%. The Tribunal has granted 9% rate of interest. It is contention of learned counsel for respondent that as per the judgment of the Hon'ble Supreme Court of India in the case of ***Benson George V/s Reliance General Insurance Co. Ltd., and others*** reported in ***2022 SCC Online SC 238***, the claimant is entitled for 6% interest, hence I am considering interest rate of 6%.

11. As this Court has considered the income of the appellant as Rs.7,500/- per month, appellant has suffered 10% permanent disability, so 10% of it comes to Rs.750/-, Rs.750/- X 12 = Rs.9000/- is the annual loss of the appellant. At the time of accident, the age of the appellant was 31 years, therefore, the multiplier is 15, then Rs.90,000/- X 15 comes to Rs.1,35,000/-. The Tribunal has granted medical bills of Rs.11,249/- and amount of Rs.5,000/- towards pain and suffering and amount of Rs.5,000/- as a special diet, therefore, the total claim of the appellant comes to Rs.1,56,240/-. 60% of it comes to Rs.90,000/-. The Tribunal has awarded Rs.66,750/- as

compensation inclusive of N.F.L. to the appellant. So the appellant is entitle to enhanced amount of Rs.90,000/- - Rs.66,750/- = Rs.23,250/-.

12. In view of the above, I pass the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant is entitled to get enhanced amount of Rs.23,250/-.
- (iii) The appellant is entitled to receive interest @ 6% per annum.

13. Accordingly, the appeal is disposed of in above terms.

**[S.G.DIGE]
JUDGE**

SGA