

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

**FIRST APPEAL NO.1099 OF 2010**

Vaijnath s/o. Nagnathappa Lature,  
Age 59 years, Occupation Business,  
R/o. Shivaji Nagar, Latur,  
Taluka & District Latur.

**.. APPELLANT**

**VERSUS**

1] Deelip s/o. Chandmal Kataria,  
Occupation : Driver,  
Since deceased through legal  
representative.

1/1. Mrs. Surekha w/o.Deelip Kataria  
Age 44 years, Occupation : Business,  
R/o. In front of A/6, Kushidham Road,  
Satedi, In front of Geeta Apartment,  
Ahmednagar, District Ahmednagar.

2] Mrs. Surekha w/o Deelip Kataria  
Age 44 years, Occupation : Business,  
R/o. In front of A/6, Kushidham Road,  
Satedi, In front of Geeta Apartment,  
Ahmednagar, District Ahmednagar.

3] Royal Sundaram Alliance Insurance  
Co.Ltd. Nashik  
Maruti Insurance Agency Network Ltd.  
46, White Road, Chennai-600014  
Issue by Kankariya Automobile  
Private Ltd. Ahmednagar  
District Ahmednagar.

**.. RESPONDENTS**

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Mr.H.B.Nandgawale, Advocate holding for Mr.Vijay Sakolkar, Advocate for the appellant.

Mr.A.R.Puranik, Advocate holding for Mr.A.S.Deshpande, Advocate for respondents

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**CORAM : S.G.DIGE, J.**

**DATE : 13.10.2022**

**ORAL JUDGMENT :**

1] By way of this appeal, the appellant is seeking enhancement of compensation.

2] It is the contention of the learned counsel for the appellant that the appellant has suffered 30% permanent disability in the accident. The monthly income of the appellant was more than Rs.10,000/- per month but the Tribunal has considered it Rs.1,20,000/- p.a. which is on lower side. The Tribunal has applied multiplier of 8, but considering the age of the appellant, it should be 9. The Tribunal has not awarded compensation under non pecuniary heads, hence, requested to allow the appeal.

3] It is the contention of the learned counsel for

the respondents that the Tribunal has properly considered the income of the injured at Rs.10,000/- p.m., except bare words of the claimants, nothing produced on record to prove that the claimant was earning more than Rs.10,000/- per month. The Tribunal has awarded the compensation on the basis of the evidence led before the Tribunal, which is proper and correct, hence, no interference is required in it.

4] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is inadequate compensation awarded by the Tribunal. The Tribunal has awarded Rs.54,900/- inclusive of no fault liability compensation to the claimant. It is the contention of the learned counsel for the appellant that the appellant was earning more than Rs.10,000/- per month from his fabrication business. To prove earning, the claimant examined himself at Exhibit-28. The claimant has stated that in the accident he sustained fracture to his right leg and due to injury to his right leg, his movement is restricted. Due to treatment period, he has suffered loss in

business to the extent of Rs.5 lakhs. He had fabrication work shop at Latur. Though the claimant has stated that he had suffered loss of Rs.5 lakhs due to the treatment period, but no evidence produced on record to show that the claimants suffered loss due to the said accident. In the evidence, the claimant has not stated about his monthly income. In my view, yearly income of Rs.15,000/- considered by the Tribunal is proper. The Tribunal has considered the age of the claimant as 60 years and applied multiplier of 8. As per the view of the Hon'ble Apex Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation & another** reported in [2009] 6 SCC 121, it should be 9. Hence, I am considering the multiplier of 9. It has come on record that the accident was occurred 15 kilo meters away from Solapur, the claimant was admitted in hospital at Solapur whereas the claimant is resident of Latur. But no compensation under the head of transportation is awarded, hence, I am considering Rs.10,000/- for transportation. The claimant was admitted there from 27<sup>th</sup> June, 2006 to 8<sup>th</sup> July, 2006. The Tribunal

has awarded compensation of Rs.2,000/- for pain and agony, in my view, the claimant has suffered 30% disability, it should be Rs.10,000/-. I am considering Rs.10,000/- for pain and agony. The amount for special diet is not awarded, I am considering Rs.5,000/- for special diet. Loss of amenities in life is not awarded, I am considering Rs.10,000/- for loss of amenities in life. It appears from record that as per the terms of insurance policy, the coverage of insurance is up to Rs.1,00,000/- only. The claimant has not produced any evidence on record to prove that he is entitled for compensation of more than Rs.1,00,000/-. Considering the above calculations, the claimant is entitled for the following compensation :

After applying multiplier of 9, the income of claimant Rs.15,000/- x 9 comes to Rs.1,35,000/-, out of 30% disability comes to Rs.40,500/-. Rs.36,000/- is already awarded by the Tribunal, hence, the claimant is entitled for remaining amount of Rs.4,500/-. This Court has considered the amount under non pecuniary heads i.e. transportation

Rs.10,000/-, pain and agony Rs.10,000/-, Special diet Rs.5,000/-, loss of amenities in life Rs.10,000/-, total amount comes to Rs.35,000/-. Hence, the claimant is entitled for around Rs.39,500/-, it rounded to Rs.40,000/-.

5] In view of the above, I pass the following order:-

**ORDER**

i] The appeal is allowed.

ii] The appellant is entitled for enhanced amount of Rs.40,000/- along with interest @ Rs.6% p.a. from the date of filing of the application till realization of the amount.

iii] The respondents are directed to deposit the enhanced amount along with accrued interest thereon within six weeks from today.

iv] The appellant is permitted to withdraw the deposited amount.

v] Appeal is disposed of accordingly.

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

DDC