

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

**FIRST APPEAL NO. 747 OF 2003  
WITH  
CIVIL APPLICATION NO. 5935 OF 2007**

Radheshyam Ghanshyam Shinde

..APPELLANT

VERSUS

Bhanudas Sudam Kharat and Others

..RESPONDENTS

....

Mr. D.R. Jaybhar, Advocate for appellant

Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for respondent nos. 1 and 2

Mr. A.S. Deshpande, Advocate for respondent no.3

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**CORAM : R.G. AVACHAT, J.**

**DATE : 21<sup>st</sup> NOVEMBER, 2022**

**PER COURT :**

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988. The appellant herein is the original claimant in Motor Accident Claim Petition No. 392 of 1999. He preferred the said petition for compensation on account of injuries and permanent disability suffered in an accident involving the motor vehicle. The Motor Accident Claims Tribunal, Beed ("Tribunal") vide its judgment and award dated 18<sup>th</sup> October, 2002 partly allowed the petition granting the appellant compensation of Rs.2,00,000/- with 9% p.a. interest thereon. The amount of compensation was directed to be paid by the respondent – insurance company and the driver and owner of the vehicle involved in the accident.

2. The appellant - original claimant, having been not satisfied with the quantum of compensation awarded under the impugned award, has preferred this appeal for enhancement of compensation.

3. Admittedly, none of the respondents has challenged the impugned award. As such, the question involved in this appeal is as to whether the appellant is entitled for enhancement of compensation.

4. Admittedly, the appellant suffered 20% of the permanent disability. His disability certificate (Exh.80) indicates him to have suffered post traumatic anterior bowing of left tibia fibula, with shortening left lower limb with restricted ankle movements resulting in 20% disability in him. The appellant was serving with Telco Co., Pune. The Tribunal found him to be entitled to compensation amounting to Rs.5,29,906/-. The Tribunal, however awarded a sum of Rs.2,00,000/- since the claim was restricted to that much amount. In view of the Tribunal, break-up of the compensation awardable to the appellant was as under :-

|       |                                                                                      |               |
|-------|--------------------------------------------------------------------------------------|---------------|
| (i)   | Towards hospitalisation, medicare and other related items;                           | Rs.34,106/-   |
| (ii)  | Towards loss of earning for four months i.e. during treatment period/pecuniary loss; | Rs.42,000/-   |
| (iii) | Towards future economic loss;                                                        | Rs.4,48,800/- |
| (iv)  | Towards pains, sufferings, mental agonies, etc.                                      | Rs.5,000/-    |
|       | Total :-                                                                             | Rs.5,29,906/- |

5. Since, under the impugned award a sum of Rs.2,00,000/- has been awarded, the same has attained finality so far as respondents are concerned. They are not expected to challenge the findings recorded by the tribunal. Before this Court, learned counsel for the appellant submitted that the appellant had lost his job due to nature of the injuries suffered. There is, however no evidence in that regard. It, however appears that loss of future earning capacity has not been considered.

6. After having gone through the evidence in the matter and the nature of injuries suffered by the appellant, this Court finds him to be entitled to a sum of Rs.1,00,000/- more than one awarded under the impugned award. In the result, the appeal partly succeeds. Hence, the following order :-

### **ORDER**

(i) First appeal is partly allowed.

(ii) The amount of compensation awarded by the Motor Accident Claims Tribunal, Beed vide judgment and award dated 18<sup>th</sup> October, 2002 is enhanced from Rs.2,00,000/- to Rs.3,00,000/-.

(iii) The enhanced amount of compensation shall carry interest @ 5% p.a. from the date of claim petition to the date of payment of the amount.

(iv) If the amount is deposited with this Court, the same shall be paid to the appellant/original claimant immediately with interest, if any, accrued thereon.

(v) Civil application stands disposed of accordingly.

**( R.G. AVACHAT, J. )**

SSD