

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

FIRST APPEAL NO.1481 OF 2004

Vidyasagar s/o. Janardhanbuva Patangankar

Age: 43 yrs. Occ : Service,

R/o. Beed, Tq. & Dist : Beed.

.. APPELLANT

[Ori. Claimant]

VERSUS

1] Shriram s/o. Shankarlal Zanwar

Age: 50 Yrs., Occ : Business,

R/o. Rajuri [Navgan],

Tq. Dist : Beed.

2] The New India Assurance Co. Ltd.,

Through its Branch Manager,

Branch Officer, Ashiyana Buldg,

Jalna Road, Beed.

.. RESPONDENTS

[Ori. Respdts.]

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Mr.S.M.Kulkarni, Advocate for the appellant

Mr.R.C.Bora, Advocate holding for Mr.A.R.Borulkar,
Advocate for respondent no.1.

Mohit R. Deshmukh, Advocate for respondent no.2.

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CORAM : S.G.DIGE, J.

DATE : 16.09.2022

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the
judgment and award passed by the Motor Accident Claims

Tribunal, Beed, the appellant – original claimant preferred this Appeal for enhancement of the amount.

Brief facts of the case are as under:-

2] On 11th September, 2000 the appellant and the deceased Mahadeo were coming on scooter to Beed. At about 2 to 2.30 p.m. near Navgan Rajuri, Beed a car bearing No.MHA-7124 dashed the scooter resulting death of Mahadev and fracture to the leg of the appellant. Both of them were admitted to the Hospital. The appellant was later on admitted to the Dhoot Hospital at Aurangabad. Mahadeo succumbed to the injuries. The appellant sustained 20% permanent disability due to the accidental injuries. A crime was registered against the driver of the car.

3] The appellant – original claimant filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Beed [for short ‘the Tribunal’]. The Tribunal has awarded the amount of Rs.30,310/- inclusive amount of Rs.25,000/- given under no fault liability. Against the said judgment and order, this appeal.

4] It is the contention of the learned counsel for the appellant that the appellant got 20% permanent disability in the said accident. The appellant was admitted in Dhoot Hospital, Aurangabad for a period of one month. In spite of that, these facts are not considered by the Tribunal. No compensation is awarded under the head of loss of amenities in life, special diet and absence of duties. The appellant was a pillion rider on the scooter but the Tribunal has considered 40% negligence of the appellant, which is erroneous, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent no.2 that the appellant is continued in service. Hence, there is no effect of disability on the appellant and there is no loss of income of the appellant. The learned counsel further submits that the Tribunal has considered all the facts led before him and on that basis the judgment is passed, which is legal and valid. Hence, no interference is required in it.

6] I have heard all learned counsel. Perused the

judgment and order passed by the Tribunal. The Tribunal has considered 40% contributory negligence of the appellant. In the First Information Report it is mentioned that the deceased Mahadeo was riding the scooter and appellant was pillion rider of the scooter. When the appellant was pillion rider, so no question of his contributory negligence has arisen. It shows that the Tribunal, without application of mind, has considered 40% contributory negligence of the appellant, which is erroneous. The Tribunal has not awarded compensation for transportation as the appellant was admitted in the Dhoot Hospital at Aurangabad and it appears from record that he was there for one month. The appellant is resident of Beed and he was admitted in the Dhoot Hospital at Aurangabad, so transportation charges is necessary to award. Hence, I am considering Rs.10,000/- as transportation charges. The appellant got 20% permanent disability so he is entitled for loss of amenities in life of Rs.12,000/-. The Tribunal has not awarded compensation for special diet, so I am considering Rs.3,000/- for special diet.

7] Considering above calculations, the appellant is entitled for the enhanced compensation of Rs.25,000/-.

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

ORDER

i] Appeal is partly allowed.

ii] The appellant is entitled for the enhanced compensation of Rs.25,000/- along with the interest @ 6% p.a. on enhanced amount from the date of filing of the application till realization.

iii] Respondent no.2 is directed to deposit enhanced amount within four weeks. The appellant is permitted to withdraw the deposited amount.

iv] Appeal is disposed of accordingly.

[S.G.DIGE]
JUDGE

DDC