

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

FIRST APPEAL NO. 1556 OF 2021

Subhash S/o Sopanrao Gaikwad
Age : 28 years, Occ : Labour,
R/o Aaral, Tq. Basmat,
Tq. Hingoli

.. APPELLANT

VERSUS

1. Munjaji S/o Manikrao Rakhonde
Age : 47 years, Occ : Agri.,
R/o Samsapur, Tq. & Dist. Parbhani

2. The New India Insurance Co.
Through its Manager
"Yashodeep", Shivaji Road,
Parbhani, Tq. & Dist. Parbhani

..RESPONDENTS

Advocate for Appellant : Mr.M.P. Kale
Advocate for respondent no.1:Mr. S.B. Ghatol Patil
Advocate for respondent no.2:Mr. Mohit R. Deshmukh

CORAM : S.G.DIGE, J.

RESERVED ON : 22/07/2022

PRONOUNCED ON : 27/07/2022

JUDGMENT :

By present appeal, the appellant is seeking enhancement of compensation.

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

The appellant had been to village Sadegaon for marriage purpose by auto no.MH-22/

H-4569. While returning from the said village after marriage, respondent no.1 drove the said auto in a rash and negligent manner and on a turn turtled. In the said accident, the appellant suffered grievous injuries to his head, to the shoulder and spinal cord. He was initially admitted in the Government Hospital, Parbhani and thereafter shifted to Government Hospital, Nanded. The appellant had also taken treatment at Kadam Hospital, Nanded, Yeshoda Hospital, Nanded and Dhoot Hospital, Aurangabad and surgeries were operated on him. The incident was reported to the police. On the complaint of the appellant the crime was registered against respondent no.1.

3. The appellant filed claim petition before the Motor Accident Claim Tribunal, Parbhani (for short "the Tribunal") under section 166 of the Motor Vehicles Act, 1988 (For short, "M.V. Act"). Considering the evidence led before the Tribunal and hearing

the parties, the Tribunal has partly allowed the claim petition. Against the said judgment and order this appeal for enhancement of compensation.

4. It is the contention of the learned counsel for appellant that the Tribunal has not properly appreciated the evidence on record and thereby erred in deciding the claim of the appellant. The appellant has suffered 36% injury. Though initially the appellant has produced the injury certificate of 25% as the injury suffered by the appellant, but appellant could not be recovered fully and thereafter he had undergone another surgery, the total disability increased and same become 36%. The competent authority has issued disability certificate in that regard. Therefore, considering 36% injury suffered by the appellant he is entitled for enhanced compensation. The Tribunal has not considered the medical treatment undergone by the appellant. Due to injury caused in accident,

the appellant is not in position to do the agricultural labour work, therefore, there is 100% loss of income and on this ground, the appellant is entitled for enhancement of compensation.

5. The learned counsel further submits that at the time of accident, the appellant was 21 years age and due to serious injury to his spinal cord and loss of income, he could not marry and this has caused serious suffering and agony and under this head also, the appellant is entitled for some amount. At present, the appellant is not doing any work, due to injury suffered by him. Therefore, there is loss of total income. The compensation awarded by the Tribunal is very meagre, hence requested to allow the appeal. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited* reported in (2014) 2 SCC 735.

6. The learned counsel for respondent no.2 submits that while awarding the compensation, the Tribunal has considered all the aspects and granted just and proper compensation. 36% disability is given by doctor, but said doctor is not examined to prove disability certificate. The appellant could not prove before the Tribunal that there is 100% functional disability caused to him, because of said accident. The Tribunal has awarded the appropriate compensation under various heads and said compensation is given as per the evidence produced on record by the appellant. Hence requested to dismiss appeal.

7. I have heard the learned counsel for the parties. Perused the judgment and order passed by the Tribunal. The issue involved in the present appeal is quantum of compensation given to the appellant is proper or not. The appellant's claim petition before the Tribunal was for Rs.5,00,000/- and the Tribunal has awarded Rs.4,22,422/-.

8. It is contention of the appellant that the appellant was agricultural labour and he was getting Rs.6,000/- per month but due to the accident, he is unable to do physical work, however this fact was not considered by the Tribunal. The Tribunal has considered 25% disability of the appellant and on that basis the compensation is calculated. The Tribunal has not given any reason why he has not considered the disability certificate of 36%. In the impugned judgment, the Tribunal has observed that as per the argument of the learned counsel for the respondent no.2, the disability decreases gradually. I am unable to understand mere on argument of the learned counsel for respondent no.2, the Tribunal has not considered the second disability certificate of 36%. It is significant to note that while answering the issue no.1, the Tribunal has observed that bones of appellant were fractured, two bones of spinal cord are broken, surgery was performed on it. Thereafter

again appellant was admitted in the hospital.

9. The appellant in his evidence before the Tribunal at Exhibit-24 has stated that due to accident, there was fracture to bones. The appellant suffered fracture and fracture of C-2 and C-7 of spinal cord and collar bone. Surgeries were performed on these fractured bones. He also suffered urination problem. There is 36% disability caused to him due to said accident. There is no cross-examination on the point of injuries caused to the appellant. It is not denied by the respondents that the appellant has not suffered 36% disability. It is true that the concerned doctor has not been examined to prove disability certificate. The medical papers produced on record shows that the appellant had suffered the fracture injuries as stated by him and it is not denied by respondent no.2. Moreover, the Tribunal has considered the disability of 25%. No reasons are given by the Tribunal for non-considering

36% disability. The medical papers shows that there was fractures to the spinal cord of the appellant and disability certificate is issued by the Medical Board. Hence, in my view, there is no reason to disbelive disability of 36%. The Tribunal has granted Rs.20,000/- as non-pecuniary losses. Considering the nature of injuries suffered by the appellant, it must be Rs.70,000/-. No compensation is given under head of amenities in life and marriage prospects. At the time of the accident, the appellant was 21 years old, due to injuries suffered by him, he could not get married. Appellant has caused injury to his spinal cord. Hence, the appellant is also entitled for loss of marriage prospects. Accordingly, the appellant is entitled for Rs.50,000/- for loss of amenities in life and marriage prospects.

10. In the light of abovementioned discussion, the appellant is entitle for the following amount :-

Head**Compensation awarded**

1.	Notional Income	:	Rs.6000/- (as considered by Tribunal)
ii.	Multiplier	:	18 (Age of claimant is 21 years)
iii.	Permanent Disability	:	36% as per certificate
iv	Pecuniary Loss	:	Rs.6000 X 12 X 18 = Rs.12,96,000/- 36% of it = Rs.4,66,560/-
v	Medical Bills	:	Rs.78,242/- (As awarded by Tribunal and not disputed by both parties)
vi	Non Pecuniary Losses	:	Rs.70,000/-
vii	loss of amenities in life and marriage prospects	:	Rs.50,000/-
viii	Total Compensation	:	Rs.4,66,560/- + Rs.78,242/- + Rs.70,000/- + Rs.50,000/- = Rs.6,64,802/-
ix	Amount Already Awarded by Tribunal	:	Rs.4,22,242/-
x	Enhancement	:	Rs.6,64,802 - Rs.4,22,242/- = Rs.2,42,560/-
xi	Interest as awarded by Tribunal @ 7% from the date of filing of claim petition till realization of amount on enhanced amount.		

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

ORDER

(i) The appeal is partly allowed.

(ii) The amount of compensation is enhanced from Rs.4,22,242/- to Rs.6,64,802/-.

Appellant is entitled to enhance amount of Rs.2,42,560/- @ 7% from the date of filing claim petition till realization of amount.

(iii) Appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-