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

FIRST APPEAL NO. 484 OF 2012

Deepak s/o. Govardhanrao Pawar,
Age: 34 years, Occu : Police Constable,
R/o. 27/2, HUDCO, N-10,
Aurangabad. .. **APPELLANT**
[Ori. Claimant]

VERSUS

1] Prakash s/o. Sahebrao Nil,
Age: Major, Occu : Driver,
R/o. Hasta, Tq. Kannad
Dist. Aurangabad.

2] Sangeeta Balasaheb Avhale,
Age: Major, Occu : Owner of
Matador No. MH-21-5944,
R/o. Hasta, Tq. Kannad,
Dist. Aurangabad.

3] The United India Insurance
Company Ltd.
Through its Senior Division Manager,
Divisional Office, Usmanpura,
Aurangabad. .. **RESPONDENTS**

…

Mr.Shashikant R. Pande, Advocate for the appellant
Mr.S.S.Rathi, Advocate for respondent no.3.

…

WITH

CROSS OBJECTION STAMP NO. 19458 OF 2012
IN FIRST APPEAL NO. 484 OF 2012

United India Insurance Company Limited
Having its Divisional Office at

Osmanpura, Aurangabad
Through its Authorised Signatory
Divisional Manager
Rajkar s/o. Sainappa Waghmare
Age: 57 yrs., Occ:Service,
R/o. Osmanpura, Aurangabad. .. **Objection Petitioner**
Ori. Respondent no.3

VERSUS

1] Deepak s/o. Govardhanrao Pawar,
Age: 35 yrs, Occ : Service,
R/o. 27/2, HUDCO, N-10,
Aurangabad

2] Prakash s/o. Sahebrao Nil,
Age: Major, Occ : Driver,
R/o. Hasta, Tq. Kannad
Dist. Aurangabad.

3] Sangeeta Balasaheb Avhale,
Age: Major, Occ : Owner of vehicle,
R/o. Hasta, Tq. Kannad,
Dist. Aurangabad. .. **Respondents**
[Resp.No.1 Ori.Claimant]

…

Mr.S.S.Rathi, Advocate for the appellant.
Mr.Shashikant R. Pande, Advocate for respondent no.1.

…

CORAM : S.G.DIGE, J.
DATE : 21.09.2022

ORAL JUDGMENT :

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

Tribunal, Aurangabad [for short 'the Tribunal'], the appellant – original claimant has preferred this appeal for enhancement of compensation on the ground that the Tribunal has not granted interest on the compensation amount. The original respondent no.3 – Insurance Company has filed Cross Objection on the ground that the Tribunal has awarded exorbitant compensation without any documentary evidence. I am deciding the Appeal and Cross Objection by this common judgment.

2] It is the contention of the learned counsel for the appellant – original claimant that the Tribunal has considered all the evidence led by the appellant and has awarded compensation but the interest on the compensation amount is not awarded, hence, requested to allow the appeal.

3] It is the contention of the learned counsel for respondent no. 3 that while awarding compensation, the Tribunal has considered all the aspects, hence, the order passed by the Tribunal is legal and valid. It is further contention of the learned counsel for respondent no.3 – cross objector that the Tribunal has granted Rs.3,50,000/- as medical expenses and Rs.1,50,000/- for loss of without pay salary. The injured was a Government servant. He has drawn salary so no question of loss of pay arises. There are no documentary proof produced on record to prove that there was medical expenses of Rs.3 lacs.

4] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The Tribunal has awarded compensation of Rs.8,67,000/- inclusive of the amount of no fault liability. The Tribunal has further directed the respondents to deposit the said amount within one month from the date of order, failing which, the said amount will carry interest at the rate of 12% p.a. from the date of application till deposit. It is seen from the operative order that the Tribunal has not awarded interest on the compensation amount, hence, I am considering that the appellant is entitled for interest @ 7.5 p.a. While considering the medical expenses of Rs.3,50,000/-, the

Tribunal has observed that the Tribunal fully believed the statement on oath given by the claimant about his expenditure at different hospitals amounting to Rs.3,50,000/-. I unable to understand that on mere statement of the claimant the Tribunal has awarded Rs.3,50,000/- for medical expenses without any medical bills or Doctor bills. Unless there are documents on record to prove that the said amount was utilized for medical expenses, it cannot be considered. Hence, I am not considering Rs.3,50,000/- for medical expenditure. The Tribunal has considered Rs.1,50,000/- for loss of without pay. The Tribunal has observed that due to the said accident, the appellant was unable to attend the duties, therefore, his leave was sanctioned without pay, therefore, that salary can also be taken into account and it comes to Rs.1,50,000/-. It is supported by Exhibit-58. The Tribunal has considered Exhibit-58 for giving compensation of Rs.1,50,000/-. I have perused Exhibit-58. This document shows that the appellant was sanctioned commuted leave, earned leave and extra ordinary leave. So these leaves are sanctioned. It is also mentioned that there are balance of leaves in his leave account. In this document nowhere mentions that the said leave was without pay. In my view, the Tribunal has erred in considering the amount of Rs.1,50,000/- as without pay. Hence, I am not considering the amount of Rs.1,50,000/- as compensation. If these amount calculates, it comes to Rs.5 lacs.

5] It is the contention of the learned counsel for the appellant – original claimant that though the appellant has suffered 51% injuries in the accident, no future prospects are granted to the appellant by the Tribunal, it should be considered and no non-pecuniary damages are awarded, it should also be considered. From the impugned judgment, it appears that non pecuniary damages are not awarded, hence, I am considering the amount of Rs.30,000/- for pains and sufferings, Rs.20,000/- for discomfort and Rs.15,000/- for attendants and traveling.

6] Considering the above calculations, the appellant is entitled for the following compensation :-

Monthly salary	Rs.6500/- p.m.
51% disability	Rs.3315/- p.m. x 12
Multiplier	Rs.39,780/- p.a. x 16 **Rs.6,36,480**
Pains and sufferings	Rs.30,000/-
Discomfort in life	Rs.20,000/-
Attendant and traveling	Rs.15,000/-
Total compensation awarded	**Rs.7,01,480/-** along with interest @ 7.5 p.a. from 11.07.2006 to 14.07.2010.

7] The Tribunal has awarded Rs.8,67,000/- compensation. Considering the above calculations, it comes to Rs.7,01,480/-.

8] The Insurance Company has already deposited Rs.8,66,000/- on 14th July, 2010. The appellant is entitled for Rs.7,01,480/- with interest @ 7.5 p.a. from the date of filing of the application i.e. from 11th July, 2006 to 14th July, 2010 when the amount is deposited by the respondent Insurance Company.

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

ORDER

i] Appeal is partly allowed.

ii] Cross objection is partly allowed.

iii] The appellant is entitled for compensation of Rs.7,01,480/- along with interest @ 7.5 p.a. for the period from 11.07.2006 to 14.07.2010.

iv] After adjustment of this amount, if the appellant is entitled for any excess amount from the insurance company, the Insurance Company shall deposit that excess amount within four weeks in this Court.

v] The appellant is entitled to withdraw deposited amount along with accrued interest thereon, if not withdrawn.

vi] The cross objector is permitted to withdraw excess amount along with accrued interest thereon.

vii] Accordingly, Appeal and Cross Objection are disposed of.

[S.G.DIGE]
JUDGE

DDC