

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.586 OF 2021

Prakash s/o Baliram Sabre,
Aged 45 years,
Occupation – Agriculturist,
R/o.36, New Gyaneshwar Nagar,
Manewada Road, Nagpur.

.. Appellant

.. Versus ..

1] Dr. Prabhakar Vitthalrao Pimpadkar,
Aged-Major, Occupation-Nil,
R/o. Tilak Ward, In front of Police
Station, Warora, Tah. Warora,
District-Chandrapur.

2] General Manager,
United India Insurance Co. Ltd.,
Zanshirani Chawk, Nagpur.

.. Respondents

.....

Ms. Shilpa G. Barbate, Advocate for Appellant
Ms. Winy Daigavane, Advocate h/f Shri Akhtar Ansari, Advocate for
Respondent No.1,
Shri C.A. Anthony, Advocate for Respondent No.2.

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CORAM : SMT. M.S. JAWALKAR, J.

DATED : 10.08.2022.

ORAL JUDGMENT :

Heard the matter finally at the stage of admission with
the consent of the learned counsel for the parties.

2. The appellant-original claimant has filed this appeal for enhancement of compensation. In M.A.C.P No.353/2009 the learned Tribunal awarded the amount of compensation of Rs.1,60,600/- (Rs. One Lac Sixty Thousand and Six Hundred only) to the petitioner with simple interest at the rate of 7.5 % per annum from the date of petition (excluding the previous period of 48 months from the date of judgment) till actual realization of entire amount.

3. The preliminary ground raised in this appeal is that the judgment and award passed by the learned Tribunal is unjustified, as the learned Tribunal held 20 % disability, whereas disability certificate shows 40 % disability. Secondly, about grant of interest for 48 months which is not correct in view of rojnama placed on record. The learned counsel for the appellant submitted that rojnama shows that near about for a year, the Court was vacant and on many occasions, the Presiding Officer was either on leave or on training. As such, the delay is not attributable to the appellant-claimant. Learned counsel for the appellant drawn my attention to evidence of Dr. Shailesh Bijve (PW-3) and the rojnama.

4. It appears that disability certificate was issued for 40% at the relevant time. However, the learned Tribunal rightly appreciated the evidence of Dr. Shailesh Bijve (PW-3). In paras 15 and 17, Doctor admitted in cross that he has not clinically and radiologically examined him and he was not treating doctor. He is not able to say what was the physical condition of the patient. The claimant admitted in cross that the injuries are cured and he could walk properly and doing any work independently. In view thereof, the learned Tribunal, relying on the judgment of **Rajkumar .vs. Ajaykumar and others, 2011 (2) Mh.L.J. 569**, concluded 20% physical disability. I do not find any unreasonableness or perversity in the findings recorded by the Tribunal. However, I am satisfied that the learned Tribunal however ought to have granted interest from the date of filing of application till its realisation. The record shows that the Court was vacant for about a year and on many occasions, the Presiding Officer was either on leave or on training. On this count, the denial of interest is unreasonable. Accordingly, appeal requires to be allowed to that extent. In view thereof, I pass the following order :

O R D E R

(1) The appeal is partly allowed.

(2) The Clause (ii) of the judgment and award passed by Motor Accident Claims Tribunal-2, Nagpur dated 26.07.2019 is modified as under :

Clause (ii) : Respondent nos.1 and 2 jointly and severally do pay an amount of Rs.1,60,600/- (Rs. One Lac Sixty Thousand and Six Hundred only) to the petitioner within three months from the date of this order with simple interest at the rate of 7.5% per annum from the date of petition till its realisation. The rest of the order is confirmed.

(3) Award be drawn up accordingly.

(SMT. M.S. JAWALKAR, J.)

Gulande