

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.361 OF 2002

Dinkar Rajaram Patil
r.o Himmat Bahaddur Area,
Tarabai Park, Kolhapur

...Appellant

Versus

1. Commissioner, Kolhapur
Municipal Corporation,
Kolhapur.
2. Director of Insurance,
Maharashtra State,
New Adm. Building, 16th and
17th floor, Bomba-32.
3. Anil Laxman Otari
R/o. 2069, 12th Lane,
Rajarampuri, Kolhapur.

...Respondents

....

Mr. Jayant Bardeskar for the Appellant.
Ms Tanaya Goswami, AGP for Respondent No.2.

CORAM: SHIVKUMAR DIGE, J.

DATE : 11th DECEMBER, 2023.

ORAL JUDGMENT:-

1. By this appeal the Appellant is seeking enhancement of compensation.

2. It is the contention of the learned counsel for the Appellant that while calculating the compensation, the Tribunal has

not considered monthly income of the Claimant and has awarded Rs.99,000/-as compensation, which is not proper. The Tribunal has considered 30% contributory negligence of the claimant without any evidence. The offence was registered against the driver of the offending bus. Learned counsel further submitted that in the said accident the Claimant has suffered 50% disability, certificate of disability is at Exhibit-40. The Tribunal has not awarded compensation under other heads i.e. for special diet, conveyance, loss of amenities, etc. Hence, requested to allow the appeal.

3. It is the contention of the learned counsel for the Respondent-Corporation that while awarding the compensation, the Tribunal has considered all the aspects. On that basis the Tribunal has awarded the compensation. The Claimant has not proved his monthly income before the Tribunal. No evidence was laid in that regard. Learned counsel further submitted that the judgment and order passed by the Tribunal is legal, valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal,

Kolhapur (for short 'the Tribunal').

5. It is the Claimant's case that on 01/10/1991 at about 8.00 to 8.15 p.m. while the Claimant was proceeding on a motorcycle from his shop towards Uma Talkies, a bus bearing registration No.MH 09/A-7226 came from opposite direction and gave dash to the motorcycle of the Claimant. Due to the said dash the Claimant had suffered injuries to his shoulder bones and other parts of body. The Claimant was admitted in the hospital. Doctor has given certificate of 50% disability. To prove the income, the Claimant has examined himself at Exhibit-35. He has stated that he owns 6 Acre 10 Guntha agriculture land in various pieces and he runs a hotel in partnership. While dealing with the issue of income, the Tribunal has not considered the income of the Claimant. In my view, the Claimant owns 6 Acre agricultural land and he was running a hotel in partnership. The Tribunal should have considered his notional monthly income. Considering evidence on record, I am considering it at Rs.3,000/- per month. The Tribunal has fixed 70% contributory negligence on Respondent's bus driver and 30% on the Claimant. The FIR in respect of the accident was registered against

the driver of the Respondent-Corporation. To prove the negligence of the Claimant, no witness is examined by the Respondent. In spite of that 30% contributory negligence is fixed on the Claimant, which is not proper as offence is registered against the driver of the Respondent. Hence, I am holding that the accident was caused due to sole negligence of the driver of the Respondent-Corporation and he was solely responsible for the accident. The Tribunal has not awarded future prospect. The Tribunal has not awarded amount for loss of amenities, special diet and conveyance. As the Claimant has suffered 50% disability, it should have been awarded. The multiplier has not been applied while calculating the compensation.

6. Considering the above reasons, the Claimant is entitled for following compensation:-

Income=3000 x12	36,000	
Less :50% disability	18,000	
Multiplier of 17	18,000 x 17=3,06,000/-	
	Total Loss of income	3,06,000/-
2. Future prospects (self employed (40% of total income)	1,22,400	

3. Medical expenses	76,000	
4. Pain and Suffering	25,000	
5. Loss of Amenities	50,000	
6. Special Diet	15,000	
7. Conveyance	15,000	3,03,400
	Total	6,09,400/-

The Claimants are entitled for Rs.6,09,400. If this amount is deducted from the compensation awarded by the Tribunal of Rs.99,000/-, it comes to Rs.5,10,400/-

7. Considering the above reasons, I pass following order:-

- (i) The First Appeal is allowed.
- (ii) The Claimant is entitled for enhanced compensation of Rs.5,10,400/- @ 9% p.a. from the date of filing of the claim petition.
- (iii) The Appellant-Insurance Company shall deposit the enhanced amount with interest within a period of six weeks from the date on which this order is uploaded.
- (iv) The Claimant is allowed to withdraw the

deposited amount alongwith accrued interest thereon.

- (v) The statutory amount be transmitted to the Tribunal alongwith accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

8. All pending Civil/Interim applications are disposed of.

(SHIVKUMAR DIGE, J.)