

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 384 OF 2010

Kondya Risha Vartha
Age 45 years, Occu : Labourer,
R/at Kotbi Pada, Post – Dhanivan
Tal. Dahanu, Dist. Thane

....Appellant

Versus

1. Rajendrakumar Kantilal Patel
Shiv Evg. Works, Prabhat Pura,
Biyavar Road, Aimer, Rajasthan State-305 601
(Owner of the Truck No.MH-55/G-1664)
2. National Insurance Co. Ltd.
Jay Commercial Complex,
Cadbury Naka, Thane [W]
[Insurer of the Truck No. 55/G-1664]

....Respondents

.....
Mr. S.R.Chavanke, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for Respondent No.2
.....

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th DECEMBER, 2023

JUDGMENT :

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

2. It is the contention of learned counsel for the appellant that due to accident the left arm of the appellant is amputated. There was 100% functional disability of the appellant but the Tribunal has considered it 45% and deducted the amount out of total compensation amount, hence

requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.2/ Insurance Company that the Tribunal has considered all the aspects while awarding the compensation, hence 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, Palghar (for short "**the Tribunal**"). It is claimant's case that on 24.04.2008 the claimant was traveling in jeep bearing No. MH-04-Q-1090 from village Dhanivari to Kasa by Mumbai - Ahemadabad road at that time a truck bearing HR-55-G-1664 proceeding from Mumbai to Gujrath dashed the jeep. The claimant suffered crush injury to his left arm. He was admitted in the hospital, later on his left arm had to be amputated from shoulder joint because of gangrene. It is claimant's case that claimant was a labourer and was earning Rs.4,000/- per month but because of amputation of his left arm, he is unable to do work. The Injury Certificate is at Exhibit-28. To prove his case, claimant has examined Dr. Shagir Akhtar at Exhibit-32, he has stated that left arm of the claimant is amputated from the shoulder joint. To prove disability the claimant examined Dr. Charan Jadhav at Exhibit-38. He has proved disability certificate of claimant which is at Exhibit-39. According to him the claimant has sustained 45% permanent

disability. While dealing with the issue of awarding compensation, the Tribunal has considered monthly Notional income of claimant at Rs.3,000/- per month and by applying multiplier, the compensation amount comes to Rs.5,04,000/- but while awarding compensation, the Tribunal has deducted 45% amount from the said compensation as there was 45% disability. I am unable to understand the observation of the Tribunal as the claimant in his evidence at Exhibit-22 has stated that due to amputation of his left arm he is unable to do labour work, earlier he was doing labour work. In my view, though there is disability of 45% but the claimant was labourer and due to amputation of his left arm his functional disability is 100%, hence it should have been considered by the Tribunal. The Tribunal has not awarded compensation amount for attendance, I am considering it at Rs.10,000/-. The Tribunal has not given future prospects. As per the view of Hon'ble Apex Court in the case of ***Sarla Verma and Ors Versus Delhi Transport Corp. & Anr.***¹ as there is 45% permanent physical disability and 100% functional disability the claimant is entitled for 40% future prospects.

5. Considering the above calculations, the appellant/claimant is entitled for following compensation :

Particulars	Rs.	Entitlement
Notional Income	Rs.	3,000.00

¹ AIR 2009 SC 3104

Annual Income (3000 X 12)	Rs.	36,000.00
Multiplier Rs. 36000 X 14	Rs.	5,04,000.00
Loss of earning capacity 100%	Rs.	2,01,600.00
Medical Treatment	Rs.	10,000.00
Pain and Suffering	Rs.	10,000.00
Attendance	Rs.	10,000.00
Total Compensation	Rs.	7,35,600.00
Less compensation awarded by the Tribunal	Rs.	2,64,800.00
Total enhanced amount	Rs.	4,70,800.00

The claimant is entitled for the amount of Rs.4,70,800/-.

6. In view of above, I pass following order:

ORDER

- i. The appeal is allowed.
- ii. The claimant is entitled for enhanced compensation amount of Rs.4,70,800/- @ 7.5% from the date of filing claim petition till realisation.
- iii. Respondent No.2/Insurance Company shall deposit the enhanced amount alongwith accrued interest within six weeks.
- iv. Appellant/claimant is permitted to withdraw deposited amount along with accrued interest thereon.

7. The appeal is disposed off. Pending applications, if any, stand disposed of.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)