

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

FIRST APPEAL NO.1358 OF 2002

Sudhakar Alias Sadashiv Namdeo Kolekar }
Vegetable Merchant, R/at House }
No.2442, C-Ward, Shaniwar Peth, }
Kolhapur. } **...Appellant**

Versus

1. Mohan Mahadeo Deshpande }
R/at Dombivali (W), Shastrinagar, }
Pitruchhaya Building, Taluka-Kalyan, }
District-Thane. }

NILAM
SANTOSH
KAMBLE

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2023.06.01
15:12:08 +0530

2. The Manger, The New India Insurance }
Co. Ltd. }
Bombay (Summons to be served on its }
Branch at Pune, Gulmohar Apartments, }
East Street, Pune) }

3. Dayaram Dhondiram Rajput }
R/at Dombivali (W), Shastrinagar, }
Pitruchhaya Building, Room No.41, }
Taluka-Kalyan, District-Thane. }

4. Jayram Sukrya Mhatre }
R/at Jayram Mhatre Chawl, Near DNC }
High School, Nandivali Road, }
Dombivali (E), District-Thane. } **...Respondents**

Mr.T.S. Ingale, for the Appellant.
Ms.Poonam Mital, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27 APRIL 2023

JUDGMENT :-

. By way of this Appeal the Applicant-Claimant is seeking enhancement of the compensation.

2. The learned counsel for the Appellant-Claimant submits that the Claimant has suffered 25% disability in the accident and after accident Claimant has lost his earning capacity. But Tribunal has not considered this fact and has awarded lump-sum compensation of Rs.25,800/- which is improper.

3. The learned counsel further submits that the Claimant was doing business of selling vegetable and was earning more than Rs.3,000/- per month before the accident. But Tribunal has not considered this fact. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondent-Insurance Company vehemently submits that accident occurred when Claimant was trying to cross highway. The said accident was occurred due to the sole negligence of the Claimant. The Tribunal has considered all the aspects and on that basis compensation is awarded, which is proper.

5. Moreover, to prove disability and medical expenses the Claimant has not examined doctor. Hence, requested to dismiss the Appeal.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'The Tribunal').

7. It is Claimant's case that on 27 October 1991 the Claimant was returning on his vehicle while crossing Pune-Satara road, he was at the fag end of the other side of the road, at that time he was dashed by Fiat Car bearing registration No.MHO-5A/6807 coming from Satara side. The said car was being driven in rash and negligent manner. After giving dash to the Claimant car went ahead to the extent of 25 feet. The Claimant had sustained fracture of tibia-fibula and grievous hurt in the said accident. The offence was registered against the driver of the offending car.

8. To prove his case the Claimant examined himself at Exhibit-27. He has stated that due to dash of car he had sustained injury on his leg, chest and face. Initially, he was taken to the Dr.Bhagali's Hospital, Pune and thereafter he shifted to Pune Hospital. His leg was kept in Plaster and then he was shifted to Kolhapur. There he under went surgical operation.

There was nailing and plating of his fractured leg for about three weeks. To prove the disability the Claimant has not examined doctor as opponent Insurance Company had admitted disability certificate which is at Exhibit-31. It shows that claimant has sustained fracture of tibia-fibula because of this injury the Petitioner has sustained 25% permanent partial disability.

9. In my view, admittedly, Claimant sustained injuries in the accident. It appears from record that his leg is shortened by one inch due to accidental injuries. But while awarding compensation the Tribunal has not considered monthly income of deceased nor multiplier is applied nor future prospects are awarded. It has come in the evidence of the Claimant that he was used to purchase vegetable at Bangalore and Kolhapur and used to sell it in Pune Market. From this business he was getting Rs.2,500/- per month. But due to accidental injuries his business is totally stopped for couple of years. Nothing elicited in cross-examination of this witnesses.

10. Considering evidence on record I am considering Rs.1,500/- per month as monthly income of the Claimant. It is contention of the learned counsel for the Respondent/Insurance Company that the accident occurred when Claimant was crossing the road on his motorcycle. There was contributory negligence of the Claimant in the said accident. In my view, to prove the

negligence of the Claimant no witness was examined by the Insurance Company nor driver of the offending car stepped into witness box to prove the negligence of Claimant and the Tribunal has considered 40% contributory negligence of the Claimant. I am setting aside this observations. I am considering 25% contributory negligence of Claimant. The Tribunal has awarded compensation under other heads on lower side. The compensation for conveyance has not been awarded as the Claimant was admitted in three to four hospital. Hence, I am considering Rs.10,000/- for conveyance.

11. In view of above calculations the Claimant is entitled for following compensation.

Particulars	Amount
Income (yearly) (Rs.1,500 x 12)	Rs.18,000/-
future prospects 25% increase	Rs.4,500/-

Total Income	Rs.22,500/-
Rs.22,500 X 14 (multiplier)	Rs.3,15,000/-
Medical Expenses	Rs.15,000/-
Pain and Suffering	Rs.10,000/-
Special Diet & Nourishment	Rs.5,000/-
Loss of amenities	Rs.20,000/-
Conveyance	Rs.10,000/-
Total Compensation Payable	Rs.3,75,000/-
Deduction 25% Contributory negligence	Rs.93,750/-

	Rs.2,81,250/-
Less already received under award	Rs.25,800/-
Total Compensation	-----
	Rs.2,55,450/-
	=====

12. The Tribunal has awarded Rs.25,800/-, if this amount deducts from the amount considered by this Court Rs.2,81,850/- it comes to Rs.2,55,850/-. The Claimant is entitled for this amount.

13. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Claimant is entitled for amount of Rs.2,55,850/- @ 7.5% per annum from the date of filling of the Claim Petition till realization of the amount.

(iii) The Respondent is directed to deposit enhanced amount along with interest within eight weeks after receipt of this order.

(iv) The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

(v) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)