

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1004 OF 2018

IFFCO-TOKIO General Insurance Co. Ltd., }
Jaju Arcade, Tarabai Park, Kolhapur Also At }
AFL House, 2nd Floor, Lokbharati }
Complex, Marol Maroshi Road, Andheri(E), }
Mumbai-400 059 } ...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
KAMBLE
Date: 2023.04.28
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1. **Shri.Ashok Dinkar Karande** }
R/o. Plot No.790, Yogeshwari Colony, }
Pachgaon, Tal. Karveer, }
District-Kolhapur, }
Thr. His Next Friend }
Sou. Manisha Ashok Karande }

2. **Shri.Amit Digambar Jadhav** }
R/o. 790/38/10, B.No.12, Yogeshwari }
Colony, Pachgaon Road, Kolhapur }

3. **Shri.Yogesh Rajendra Sangar** }
R/o. Plot No.85, A-Ward, Phulewadi, Tal. }
Karveer, District-Kolhapur }

...Respondents

Mr.Rajesh Kanojia a/w Ms.Nikita Singh i/b Res Juris, for the
Appellant.

Mr.Bhushan Walimbe, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16 MARCH 2023

JUDGMENT :-

. The issue involved in this Appeal is the compensation awarded for future earning and exorbitant and excessive compensation awarded under various heads.

2. It is contention of the learned counsel for the Appellant that while awarding compensation the Tribunal has awarded compensation of Rs.72,43,478/- towards total loss of future income due to 100% loss of earning capacity and due to 100% functional disability.

3. The learned counsel further submits that the Claimant has suffered 75% permanent disability, then the Tribunal should not have awarded compensation under both heads future earning and future prospects, it should be under one head. The learned counsel further submits that the Claimant is 54 years old so his remaining service is only for six years. But this fact is not considered by the Tribunal. The learned counsel further submits that the Tribunal has awarded Rs.5,00,000/- towards mental and physical pain and agony, Rs.5,00,000/- towards attendant for entire of his life and Rs.5,00,000/- towards loss of pleasure and amenities, Rs.1,00,000/- towards shortening of life and Rs.2,00,000/- towards diet and nutritious food. These amounts are excessive and on higher side. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondent-Claimant that the Claimant has suffered 75% permanent disability in the said accident and from the date of accident date of till date the Claimant is under coma, he is bed ridden. The learned counsel further submits that as Claimant is in coma and bed ridden, the compensation awarded under various heads and for future earning and future prospects is proper. The order passed by the Tribunal is legal and valid and no interference is required in it.

5. The learned counsel relied on *Pappu Deo Yadav V/s. Naresh Kumar & Ors.*¹, *Sidram V/s. The Divisional Manager, United India Insurance Co. Ltd. & Anr.*² and *Mohd. Sabeer @ Shabir Hussain V/s. Regional Manager, U.P. State Road Transport Corporation*³

6. It is contention of learned counsel for the Appellant that though the Hon'ble Apex Court has considered about future loss and future prospects but in those cases the compensation awarded under other heads are less compared to the other matters, hence, it should be considered.

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

¹ 2012 (3) Mh.L.J.

² 2022 Supreme (SC) 1169

³ Civil Appeal Nos.9070-9071 of 2022 decided on 9/12/2022

8. The issue involved in this Appeal, the compensation awarded by the Tribunal, admittedly, the Claimant has suffered 75% permanent disability due to accident. Due to said accidental injuries still he is in coma. Considering the condition of the Claimant and relying on the judgment of the Apex Court in case of *National Insurance Co. Ltd., V/s. Pranay Sethi*⁴, the Tribunal has awarded compensation and has considered 15% future prospects. The Tribunal has also awarded future earning. It is contention of the learned counsel for the Appellant that the Claimant is alive and he is injured in the accident, compensation could not have been awarded under these two heads. The claimant is only entitled for loss of future earning.

9. In my view, though Claimant has suffered 75% permanent disability, but he is in coma, since the accident i.e. from 16 April 2016. He is bed ridden, so he is entitled for future prospects and future earnings as considered by the Tribunal.

10. The Hon'ble Apex Court in case of *Mohd. Sabeer @ Shabir Hussain (Supra)* has held that the Claimant is entitled to not just future loss of income but also future prospects. The same view is taken by the Hon'ble Apex Court in other referred cases. Hence, I do not find any merit in the contention of the learned

4 2017 ACJ 2700 (SC)

counsel for the Appellant that the Tribunal should not have awarded future prospects and future earning.

11. It is contention of learned counsel for the Appellant that compensation awarded under other heads are excessive. In my view the Claimant has become living dead person as he is in coma, since last 6 to 7 years. We cannot feel the plight of his family members as the Claimant is on bed and he is in coma. The Compensation awarded by the Tribunal under various heads are proper and I do not find any infirmity in it.

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

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it.
- (iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)