

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

FIRST APPEAL NO.1320 OF 2003

Shri.Baburao Jaysing Shitole	}	
R/at Shitalwadi Taluka Road,	}	
District-Satara.	}	...Appellant

Versus

1. Shri.Nandkumar Balwant Salunkhe	}	
R/at Sakhade, Taluka-Patan,	}	
District-Satara.	}	
2. The New India Assurance Co. Ltd.	}	
488/1 Shaniwar Peth Karad,	}	
District-Satara.	}	...Respondents

Mr.Ruchi Umrotkar a/w Mr.S.R. Page, for the Appellant.
Mr.D.S. Joshi, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29 MARCH 2023

JUDGMENT :-

1. By way of this Appeal, the Appellant-Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant-Claimant that the Appellant has sustained 20% disability and head injuries in the accident. After the accident he is unable to

do any work. The Tribunal has not considered this fact and has awarded compensation on lower side.

3. It is contention of learned counsel for the Respondent-Insurance Company that while awarding compensation the Tribunal has considered all the aspects and on that basis compensation is awarded, which is proper.

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

5. To prove the disability and income the Claimant has examined himself. He has stated that due to accident his right hand was fractured. He was admitted in Karishna Charitable Hospital. A surgical operation was done, a rod was inserted. He was indoor patient for about one month. Again he was admitted as indoor patient and he has spent around Rs.40,000/- for operation and medical expenses. He further stated that he owns agricultural land around 2 acres. He would take sugarcane crop from said field. In addition to this he was working as a tailor and used to get Rs.200/- per day. Now he is unable to do work as a tailor. He used to do dairy business. Now he is unable to perform agricultural operation. His monthly income from all sources was Rs.4,000/- to Rs.5,000/- per month. In cross-

examination he admitted that he has no documents to show that he was doing tailoring business.

6. To prove the disability the Claimant has examined Dr. Harish Rao, he has stated that the Claimant was indoor patient in his hospital from 22 January 1998 to 9 February 1998. There was fracture of lower third shaft humerus with fracture intra articular of lower end humerus. The operation was done on it and a plate was inserted. Thereafter he was discharged. There is around 20% disability. The disability certificate is at Exhibit-34. Nothing elicited in cross-examination of this witness. While awarding the compensation the Tribunal has observed that the Claimant could not prove that on account of injury there is affect on the earning capacity of the Claimant. Considering the nature of the injury and the age of Claimant, he was 35 years old at the time of the accident and as movement was restricted for sometime. On that basis the Tribunal has awarded Rs.63,000/- as compensation.

7. The learned counsel for the Appellant relied on *Sidram V/s. The Divisional Manager, United India Insurance Co. Ltd & Anr.*¹

8. In my view, the Tribunal has not considered the evidence placed on record regarding disability of the Claimant.

¹ 2022 Live Law (SC) 968

The witness (P.W.-2 Doctor) has stated that there is 80% to 90% movement of the right hand elbow of the Claimant, the Claimant was doing tailoring work as well as agricultural work, though no evidence was produced on record in that regard, but no evidence came on record to disbelieve his evidence. The Tribunal has awarded Rs.20,000/- towards permanent disability it should be Rs.50,000/- as there is 10% to 20% movement restriction in his right hand. I am considering Rs.20,500/- towards medical and incidental expenses. The Tribunal has awarded Rs.5,000/- towards pain and suffering. I am considering it Rs.10,000/- and the Tribunal has awarded Rs.10,000/- loss of amenities. I am considering it Rs.15,000/-, so total comes to Rs.1,03,000/-. The Tribunal has awarded Rs.63,000/-, if this amount deducts from this amount. It comes to Rs.40,000/-.

9. I have gone through the case law cited by the learned counsel for the Appellant. I have considered all the aspects and on that basis enhancement is awarded.

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

ORDER

(i) Appeal is partly allowed.

(ii) The Claimant is entitled for Rs.40,000/- as enhanced amount @ 9% per annum from the date of

filing of the Claim Petition till realization of the amount.

(iii) The Respondents are directed to deposit enhanced amount along with accrued interest within four weeks.

(iv) The Claimants are permitted to withdraw the deposited amount.

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

(SHIVKUMAR DIGE, J.)