

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

FIRST APPEAL NO. 40 OF 2013

Shri Laxman Appa Pawar)
 Age: 24 years., Occu: Agriculture labour)
 R/o. Anthurne, Tal: Baramati,)
 Dist: Pune)....Appellant/
 Orig. Applicant

Versus

1. Shri Vitthal Dada Thorat)
 Age: adult, Occ: business,)
 R/o. Koregaon Mul, Tal: Haveli,)
 District : Pune)

2. Future Generally India Insurance)
 Company Limited)
 The Oriyan, 5th floor, in front of)
 Don Boxco Yuth Centre, Koregaon)
 District : Pune)....Respondents
 Original Opponents

Mr. Hrutwik S. Kate i/b Mr. Rahul S. Kate for the Appellant.
 Ms. Riddhi Doshi i/b Adv. S. R. Singh for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th DECEMBER, 2023.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellant that due to accidental injuries Appellant has suffered 77% permanent disability and his right leg is amputated from knee. The Appellant was earning Rs.6,000/- per month but, the Tribunal has considered Rs.3,000/- per month, which is on lower side. Learned counsel further submitted that, at the time of accident Appellant was holding driving licence but, Tribunal has fixed 30% contributory negligence on the Appellant, which is not proper. Learned counsel further submitted that Tribunal has awarded compensation under the other head on lower side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that, at the time of accident the Appellant was not holding effective and valid driving licence. The accident caused due to sole negligence of the Appellant. No evidence was produced on record to show the monthly income of the Appellant. The Tribunal has considered all the aspects and on that basis judgment and award is passed. Hence, no interference is required in it.

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

5. It is Appellant/Claimant’s case that on 24th May, 2011 at about 9 p.m. he was returning from Pune on motorcycle towards village Nira. When, he crossed Walla Railway gate at the relevant time offending Dumper came from opposite direction in high speed and without following traffic rules and without applying deeper of front lights gave dash to the motorcycle of the Claimant. Due to said dash the Claimant sustained severe injuries. Doctor’s have performed operation on his right leg and his right leg is amputated from knee.

6. It is contention of learned counsel for the Appellant that, there was no contributory negligence of the Appellant/Claimant in the said accident. While dealing with this issue, the Tribunal has observed that, in cross-examination the Claimant has admitted that he was holding valid driving licence of two wheeler but, the Claimant has not produced licence on record, nor particulars of licence issued

by R.T.O. In such a situation, it is apparently clear that, the Claimant was not holding driving licence at the time of accident. On that basis, the Tribunal has considered 30% contributory negligence of the Claimant and 70% of driver of offending Dumper.

I am unable to understand, the observations of the Tribunal regarding contributory negligence of the Claimant. When Claimant has specifically stated that he was holding driving licence. Not production of driving licence cannot be a ground to consider it as a contributory negligence of the Claimant. When Claimant has specifically stated that he was holding effective and valid driving licence, it is a settled principle of law that, it is burden on the Insurance Company, to prove that driver was not holding effective and valid driving licence. The said burden cannot be shifted on the Claimant. The Claimant was a agriculture labourer and his right leg is amputated below knee. He has suffered 77% permanent disability due to accidental injuries. Due to these fact, he may not have been produced the details from R.T.O. office regarding his driving licence but, these facts are not considered by the Tribunal. The offence was registered against the driver of offending Dumper. The spot panchanama shows the negligence of driver of Dumper. Considering

the evidence on record, I hold that the accident occurred due to sole negligence of driver of offending Dumper. To prove the income the Claimant has examined himself at Exhibit-29. The Claimant has stated that he was working as skilled labour in the agriculture land and earning Rs.200/- per day. In support his evidence, the Claimant examined PW-3 Sanjay Hariharan, he has stated that the Claimant was working in his field and he was paying Rs.200/- per day as daily wages basis. He produced extract of the Khate Vahi and 7/12 extract at Exhibit-37 and 38.

While considering the income of the Claimant, the Tribunal has observed that PW-3 had not produced any documentary evidence to show that, the Claimant was working in his field as a skilled labour. I do not agree with the observations of the Tribunal as admittedly. The Claimant was working as the Agriculture labourer, he was working on daily wages basis so, no question of production of documentary evidence regarding his employment arises. PW-3 on oath has stated before the Tribunal that the Claimant was working as a agriculture labourer in his field. Considering the evidence on record, I am considering Rs.4,000/- as monthly income of Claimant. The Tribunal has not awarded compensation for special diet, travelling

expenses, attendance charge. Compensation of Rs.10,000/- is awarded for pain and suffering, it should be Rs.25,000/- as the Claimant has suffered 77% permanent disability.

7. Considering the above calculations, the Claimant is entitled for following compensation.

Monthly Income	Rs.4,000/-
Rs.4,000 X 77% (permanent disability)	Rs.3,080/-
Rs.3,080/- X 12(Months)	Rs.36,960/-
Rs.36,960/- X 18 (multiplier as deceased age 24 years)	Rs.6,65,280/-
Medical Bill	Rs.1,21,000/-
Attendance Charge	Rs.9,900/-
Pain and Suffering, Marriage Life, Inconvenience	Rs.50,000/-
Special Diet	Rs.30,000/-
Travelling Expenses	Rs.10,000/-
Total amount	Rs.8,86,180/-
Amount of compensation awarded by the Tribunal	Rs.2,00,292/-
Enhanced Amount	Rs.6,85,888/-

The claimant is entitled for enhanced compensation of Rs.6,85,888/-.

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

ORDER

- i. Appeal is allowed.
 - ii. The claimant is entitled for enhanced compensation of Rs.6,85,888/- @ 7.5% interest along with accrued interest thereon. From date of filing of the Claim Petition till realisation of the amount.
 - iii. Respondent No.2/Insurance Company shall deposit enhanced amount along with accrued interest thereon before the Tribunal within six weeks after receipt of the order.
 - iv. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
9. All pending interim applications are disposed of.

(SHIVKUMAR DIGE, J.)