

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1807 OF 2005
ALONG WITH
CROSS OBJECTION STAMP NO.26043 OF 2005**

1. Shri. Ravindra Jayasing Shinde, Age- 30,)
Occupation : nil, resident of Padvalwadi,) ...Appellant
Taluka : Walva, District : Sangli) (Ori. Applicant)

Versus

1. M/s. Packwel corporation,)
T / 120 MIDC, Tarapur, district -)
Thane. (owner of truck No. MH-04--P-)
2276).)
2. The New India Assurance Co. Ltd.,)
Unit No. 1 Free Press House,)
Free Press Road, Nariman Point,)
Mumbai 400 021)
(pol no. 11/000 / 31/96/ 0944) ... Opponents
valid from 15/12/96 to 14 /12/97).) ...Respondents

Mr. Jayant J. Bardeskar, Advocate for the Appellant.

Ms. Poonam Mital, Advocate for Respondent 2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY, 2023.

ORAL JUDGMENT :

1. The appeal is preferred by the appellants/claimants for enhancement of compensation. Respondent No.2 – Insurance Company also preferred Cross-Objection against the judgment and order passed by the Motor Accident Claims Tribunal, Islampur (for short “the Tribunal”). As appeal and cross objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Respondent No.2- Insurance Company that the claim petition was filed under Section 163A of Motor Vehicles Act, 1988 (for short “the M. V. Act”) but Tribunal has awarded the compensation more than Rs.8,00,000/- which is not proper. If claim petition was filed under Section 163A of the M. V. Act, the compensation is limited to Rs.4,00,000/-. Hence, requested to allow the cross-objection filed by the Insurance company and dismiss the appeal filed by the respondent-claimant.

3. It is contention of learned counsel for the appellant/claimant that the claimant has suffered 100% physical

disability in the accident, he is bedridden since the date of accident, he cannot move without assistance, he requires help of the attendant for 24 hours but while awarding compensation the Tribunal has not awarded future prospects, wrong multiplier is applied, the future medical expenses is considered on lower side, the compensation of attendance was not awarded, compensation for diapers has not been considered, the amount for motorized wheelchair is not awarded, the amount for pain and suffering is awarded on lower side and the amount for special diet is also not awarded. Learned counsel relied on **Abhimanyu Partap Singh versus Namita Sekhon and anr.(2022) 8 SCC 489.** Learned counsel requested to allow the appeal filed by claimant and dismiss the cross-objection filed by the Insurance Company.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is claimant's case that on 27th July 1997, the claimant was proceeding from Daman to Pune by a tempo bearing registration No. GJ-15/V 8566. The claimant was driving the said tempo, it was loaded with goods. When the Tempo was on Mumbra-Panvel Road Highway. At about 11.00 am, at the relevant

time, a truck bearing registration No. MH-04/P2276 came from opposite direction in rash and negligent manner and in high and excessive speed and gave dash to the vehicle of claimant by coming on wrong side of the road. The claimant sustained serious injuries in the accident, there was injury to his spinal cord. Due to accidental injury, the claimant has become paraplegic and he is confined to wheelchair. The offence was registered against the driver of offending truck i.e. respondent No.3.

6. It is contention of learned counsel for the respondent No.2-Insurance Company that claim petition was filed under Section 163A of the M. V. Act but Tribunal has awarded an amount of more than Rs.4,00,000/-. The impugned judgment shows that the claim petition was filed under Section 166 of Motor Vehicles Act, whereas in last paragraph of the impugned judgment the Tribunal has observed that the petition was filed under Section 163A of the Motor Vehicles Act. In my view, it is typographical error that the Tribunal has mentioned that the petition was filed under Section 163A of the Motor Vehicles Act, as in the opening paragraph of the judgment, it is mentioned that the petition was filed under Section 166 of the Motor Vehicles Act. The appellant has not filed any evidence on

record to show that the claim petition was filed under Section 163A of the Motor Vehicles Act. Moreover, the claim petition filed before the Tribunal is at page 31 of the paper book, it shows that the claim petition was filed under Section 166 of the Motor Vehicles Act. Hence, I do not find any merit in the contention of the learned counsel for the Respondent No.2– Insurance Company that the claim petition was filed under Section 163A of the Motor Vehicles Act.

7. While dealing with the issue of injury sustained by the claimant, the Tribunal has observed that the claimant has become paraplegic and has lost sensation below the chest and is 100% disabled. The relevant certificate is at Exhibit “45”. The 100% disability of the claimant is not challenged by the Respondent No.2– Insurance Company. Hence, I am not discussing about the medical evidence produced on record. While awarding compensation the Tribunal has not awarded future prospects. At the time of accident, claimant was 24 year old, he is entitled for 40% future prospects. The Tribunal has considered monthly income of deceased at Rs.3000/- as he was a driver. The Tribunal has considered multiplier of 17, it should be 18, I am considering the multiplier of 18. The

Tribunal has awarded future medical expenses at Rs.2,000/- per month, it should be Rs.3000/- per month as Doctor Kulkarni has stated that such patient requires a sum of Rs.4,000/- to Rs.5,000/- per month for the purpose of medical and other expenses. The Tribunal has already considered Rs.2000/-, I am considering enhancement of Rs.1,000/-. It has come in the evidence that the claimant requires medical attendance, the Tribunal has not considered attendance charges, I am considering it at Rs.5,000/- per month. Tribunal has not awarded an amount for diapers, which the claimant requires for his life time, I am considering it at Rs.1,00,000/-. The claimant requires motorized wheelchair, the Tribunal has not awarded the amount for it, I am considering it at Rs.1,00,000/-. The Tribunal has awarded an amount of Rs.25,000/- for pain and sufferings, when it has come on record that the claimant has suffered 100% functional disability, he is confined to wheelchair and he is bedridden, hence, I am considering it at Rs.2,00,000/-. The Tribunal has not awarded an amount for special diet, I am considering it at Rs.1,00,000/-. In view of the above calculations and as per the view of the Hon'ble Apex Court in **Abhimanyu Partap Singh (supra)**, the claimant is entitled for an enhanced compensation of Rs.20,55,200/-. This enhanced amount is in

addition to the amount already awarded by the Tribunal i.e. Rs.8,92,300/-.

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

ORDER

1. First Appeal No. 1807 of 2005 is allowed. The claimant is entitled for enhanced compensation of Rs.20,55,200/- at 7.5% interest per annum from date of filing claim petition till realisation of the amount.
2. The Respondent No.2-Insurance Company is directed to deposit, enhanced amount along with accrued interest thereon within eight weeks after receipt of this order.
3. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
4. The cross-objection is dismissed. No order as to cost.

5. The statutory amount deposited in cross objection be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
9. All pending applications, if any, stand disposed of.
10. Learned counsel for the respondent-Insurance Company undertakes to file vakalatnama in both the matters. The Registry is directed to accept the same.

(SHIVKUMAR DIGE, J.)