

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 86 OF 2022

Sham @ Shyam Bhagwan Pawar
Age 53 Yrs., Indian National,
R/o. Central Bank Colony, Room No.345, Building
No. 18, Samata Nagar, Kandivali, Mumbai -400 101

New Address – Room No. C-9, Society No. 254,
Pragati Society, Gorai-2, Borivali (West),
Mumbai – 400 092

.... Appellant

Versus

1. Makarand Vijay Naik
101, Suyog Plto (Plot) No. H-2/H-3, Sector
No.19, Near Vidhya Prasarak School, C.B.D.
Belapur, Navi Mumbai, Nerul
(Owner of Bus MH-43-H-7727)
2. New India Assurance Co. Ltd.
D. O. Thane (170100)
201, B-Wing, Pink Galaxy, Opp. Big Bazar,
Sandoz Baug, Kapurwadi Junction, Majiwade,
Thane – 400 607
Policy No. 17010031120100000897
Validity – 17.04.2012 to 16.04.2013

Respondents

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Mr. D.V.Sawant a/w. Mr. Priyank Kulkarni i/b. Mr. S. B. Ghadage,
Advocate for the Appellant.
Mr. D. R. Mahadik, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. By this appeal, appellant is seeking enhancement of compensation.

This Judgment is corrected/modified as per speaking to minutes of order dated 18.01.2024.

2. It is the contention of learned counsel for the appellant that on 27.12.2012 when appellant was traveling in bus it was turned turtled. Due to the accident, appellant got injured and left hand of the appellant is amputated. While awarding compensation, the Tribunal has not applied multiplier. Appellant has suffered 85% permanent disability but the Tribunal has awarded compensation on lower side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.2 Insurance company that after accident appellant is continued in the job. There is no actual loss to the appellant. The compensation awarded by the Tribunal is proper and no interference is required in it. Hence, requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). The issue in this appeal is that while awarding compensation multiplier is not applied. Admittedly, appellant has suffered 85% permanent disability in accident but while calculating compensation, the Tribunal has not applied multiplier. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma & Ors. Vs. Delhi Transport Corp. & Anr.*¹ multiplier should have been applied by the Tribunal. Considering age of the appellant, proper multiplier is 13, hence, I am considering this

¹ AIR 2009 SC 3104

multiplier. After applying multiplier total amount comes to Rs.34,71,000/-. Learned counsel for the appellant/claimant submitted that appellant/claimant is agreed for the amount claimed in claim petition.

5. The compensation claimed under Section 166 of the Motor Vehicle Act, 1998 by the appellant is Rs.30,00,000/-. The Tribunal has awarded Rs.4,00,244/, if this amount is deducted from Rs.30,00,000/- it comes to Rs.25,99,756/-. The Court has awarded amount under various heads i.e. pain and suffering, loss of amenities and disability which comes to Rs.2,20,000/-, if this is deducted from Rs. 25,99,756/- it will come to Rs.23,79,756/-. The appellant-claimant is entitled for this amount.

6. Considering the above calculations, the appellants are entitled for following compensation:

Particulars	Entitlement (In Rs.)
Monthly Income	22,250.00
Future prospects (though he is a peon, however, having driving licence therefore even after retirement, he could work as a driver, however, claiming and restricting claim upto Rs.30,00,000/- as per application)	In view of the multiplier amount is awarded no separately claimed.
Annual income	2,67,000.00
Multiplier Rs.2,67,000/- X 13	34,71,000.00
85% Permanent disability	2,950,350.00
Claimed in the application u/s. 166 of MV Act	3,000,000.00
Less awarded by Tribunal	400,244.00
Net Amount	2,599,756.00
Less not pressed – Pain and suffering, loss of amenities and disability amount separately of item Nos. 4, 5 and 6 of the Ld. MACT Award	2,20,000.00

Now entitled amount with accrued Interest at the rate of 7.5% from date of application, till realisation	23,79,756.00
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The claimants are entitled for an enhanced amount of Rs.23,79,756/-.

7. Considering the above reasons, I pass following order:

ORDER

(i) The Appeal is allowed.

(ii) Appellant-claimant is entitled for the amount of Rs.23,79,756/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount.

(iii) The Respondent No.2-Insurance company shall deposit the enhanced amount along with interest within six weeks after receipt of the order.

(iv) Appellant-claimant is permitted to withdraw amount deposited by the Insurance company.

8. The Appeal is disposed of.

(SHIVKUMAR DIGE, J.)

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