

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 572 of 2023**

Abhishek Alias Sagar Rajkumar Shaha,
Age : 30; Occ : Edu./Agri (at Present Nil)
R/o: At Post Papari, Taluka: Mohol,
District : Solapur. ... Appellant

versus

- 1 Samadhan Arjun Rokade
Age : 24; Occu : Driver,
R/o.: Tungat; Talukar: Pandharpur,
District : Solapur.
- 2 Hari Arjun Kale,
Age: Adult, Occ: Agriculture;
R/o. Wadi Kuroli; Taluka : Pandharpur
District : Solapur.
- 3 Bajaj Allianz
(Insurer of the Vehicle)
General Insurance Company
Ving City Pride Office No.4 & 8,
Second Floor, 162 Railway Lines,
VIP Road, Solapur. ... Respondents

Mr. Raghvendra B. Kulkarni, Advocate for the Appellant.
Mr. Sarthak Diwan, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd NOVEMBER, 2024.

Judgment :

1. This appeal is preferred for enhancement of compensation amount.

**SHUBHADA
SHANKAR
KADAM**

Digitally signed by
SHUBHADA
SHANKAR KADAM
Date: 2024.12.18
18:58:28 +0530

2. Learned counsel for the appellant submitted that at the time of accident, the appellant was a third year law student. Due to accident, he has suffered 15% permanent physical disability. His knee has been dislocated, he is not able to work properly, he requires few surgeries but the Tribunal has considered physical disability of the appellant at 10%, which is erroneous. Learned counsel further submitted that the Tribunal has not considered notional monthly income of the appellant. No compensation has been awarded for pain and suffering, loss of amenities in life and under other heads. Learned counsel further submitted that the Tribunal has not awarded amount for future medical expenses. Due to physical disability, the activities of the appellant are restricted, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent-Insurance Company that there was injury to the knee of the appellant. The doctor, who was examined by the claimant has admitted that the said injury suffered by the appellant is curable, so there is no permanent physical disability. The appellant was a third year law student, so no question of his monthly income arises. He further submitted that the Tribunal has considered all the aspects while passing the impugned judgment and order, no interference is required in it and requested to dismiss the appeal.

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

5. To prove his disability, the appellant/claimant has examined himself at Exhibit-25. He has stated that due to accidental injuries, he was admitted in various hospitals, he took treatment there and he has spent around Rs.12,05,583/- as medical expenses. Due to accident, he suffered serious injuries to his right knee, left knee and right palm, and his right knee was operated. At the time of accident, he was pursuing last year of LL.B..

5.1. To prove his disability, the claimant has examined Dr. Swapnil Kothadia, CW2 at Exhibit-44. He has deposed that the claimant was indoor patient in his hospital from 12th February 2018 to 16th February 2018. At Exhibit-160 is the Disability Certificate issued by Dr. Swapnil Kothadia, wherein the Doctor has stated that the claimant was admitted in his hospital on 12th February 2018 for ACL and PCL tear right side. He has further stated that the claimant is unable to walk due to ligament injury, he has 15% disability and will need surgery on his right knee for his ligament injury in near future, for that purpose, he will require Rs.2,00,000/-.

5.2. The claimant has examined Mr.Ashish Kothadiya, CW3 at Exhibit-50. He has deposed that he is serving as a Manager in Snehal Medical and Drugs house. The claimant purchased medicines amounting to Rs.36,825/- during the period 10th December 2017 to 23rd February 2018 from their medical shop vide bills (Exhibits-51 to 58).

5.3. The claimant examined Ravindra Nagne, CW4 at Exhibit-64, owner of Shriram Medical and General Stores. He has stated that the claimant purchased medicines from his shop amounting to Rs.36,883/- vide invoices(Exhibits-63 to 123).

5.4 The claimant has examined Dr.Prashant Nikam, CW5 at Exhibit-124. He has stated that on 18th September 2017, the claimant was admitted in his hospital and was discharged on 4th October 2017. Again he was admitted on 29th December 2017 and discharged on 5th January 2018. Ligament surgery was performed on the claimant on 27th September 2017. He received amount of Rs.2,04,900/- from the claimant vide bills(Exhibits-127 to 129).

5.5. The claimant examined Dr. Umesh Jadhav, CW8. He has stated that the claimant was indoor patient in his hospital from 23rd January 2018 to 29th January 2018 and was operated on 24th January 2018. He further stated that the claimant is required to undergo surgery regarding reconstruction of ligament though he recovered from the

infection of knee injury. The said surgery requires about Rs.2,00,000/- to Rs.2,50,000/-. From the evidence of these witnesses, it appears that the claimant was admitted in three different hospitals for treatment of his knee injury.

5.6. While calculating the compensation, the Tribunal has considered 10% disability. The Tribunal has considered Rs.4,000/- as notional monthly income of the claimant. In my view, the claimant was third year law student at the time of the accident, the Tribunal should have considered Rs.12,000/- as notional monthly income as in cases of medical and engineering students, generally the notional monthly income is considered around Rs.15,000/- to Rs.20,000/-. Hence, I am considering Rs.12,000/- as monthly income of the claimant.

5.7. The Tribunal has not awarded future prospect though the claimant has suffered 10 to 15% injury, it appears from the evidence of the doctor that injury is caused to knee of the claimant. A professional advocate is required to go from one place to another place, the Tribunal should have considered future prospect. Hence, I am considering 40% future prospects.

5.7. The Tribunal has considered medical expenses of Rs.3,12,877/- and considered Rs.50,000/- for future medical expenses. It has come in the evidence of the medical expert that Rs.2,50,000/- is required for future surgery, hence, I am considering this amount as future

medical expenses. The Tribunal has awarded amount of Rs.5,000/- for pain and suffering, I am considering it at Rs.25,000/-. The Tribunal has not considered amount for loss of amenities of life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for loss due to disability and disfigurement, I am considering it at Rs.50,000/-. The Tribunal has awarded Rs.5,000/- for special diet and attendance, as the appellant/claimant was admitted for long period in three different hospitals, I am considering it at Rs.25,000/-.

6. Considering the above calculations, the claimant is entitled for following compensation :

Particulars		Amount
Annual Income (Rs.12,000/- pm x 12 months)	Rs.	1,44,000.00
40% future prospects	Rs.	57,600.00
Total	Rs.	2,01,600.00
Rs.2,01,600/- x 17 Multiplier	Rs.	34,27,200.00
10% Disability (Rs.3427200/- x 10%)	Rs.	3,42,720.00
Pain and Suffering	Rs.	25,000.00
Loss of Amenities	Rs.	50,000.00
Loss due to disability and disfigurement	Rs.	50,000.00
Special Diet and Attendant	Rs.	25,000.00
Surgery and Future Medical Expenses	Rs.	2,50,000.00
Total Compensation	Rs.	7,42,720.00

The Tribunal has awarded Rs.5,38,800/- if this amount is deducted from the amount of Rs.7,42,720/- considered by this Court, it comes to Rs.2,03,920/-. The claimant is entitled for this amount.

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

ORDER

1. The appeal is allowed.
2. The claimant is entitled for enhanced compensation of Rs. 2,03,920/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.3 – Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
4. The claimant is permitted to withdraw the enhanced amount along with accrued interest thereon.
5. The claimant shall pay deficit court fees, if any, as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)