IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1615 of 2007

Mahammadhusain Abdulmajid Bagwan … Appellant
Age 33 years, Occupation Trader,
Resident of 499-A/2, Pethbhag,
Madhbol, Teli Galli, Sangli.

versus

1 Anil Prabhakar Koshti
Age : Major, Occupation : Trader,
Resident of Kavalpur, Taluka Miraj,
District : Sangli (Vehicle Owner)

2 The New India Assurance Co. Ltd.,
Kalyankar Building, Near S. T. Stand,
Sangli, Policy No.153300/31/01/43227, for
period from 4.3.2002 to 3.3.2003. …. Respondents

Mr. Avesh Ghadge, Advocate for the Appellant.
Ms. Shalini Shankar, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th NOVEMBER, 2024.

Judgment :

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

2. It is contention of learned counsel for the appellant that due to accidental injuries, the appellant has suffered 75% disability and his leg is shortened by three inches. He was a fruit hawker. Due to shortening of his leg, the appellant is unable to do any work but this fact is not considered by the Tribunal. Learned counsel further submitted that the

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Tribunal has considered monthly income of the deceased at Rs.100/- per day but it is considered only for 24 days, it should be for 30 days. Learned counsel further submitted that the Tribunal has scaled down the disability to 25%, which is erroneous. Learned counsel further submitted that the accident occurred due to sole negligence of the driver of the offending vehicle. An FIR was registered against him but the Tribunal has considered 10% contributory negligence of the appellant, which is erroneous. The Tribunal has not calculated compensation properly. Future medical expenses are not given. Proper amount is not given for loss of enjoyment in life and for pain and suffering. Learned counsel lastly submitted that the Tribunal has applied wrong multiplier. Hence, requested to allow the appeal.

3. Learned counsel for respondent No.2-Insurance Company submitted that no medical evidence is produced on record to prove the disability of the appellant. The Tribunal has considered evidence on record and, on that basis, compensation is awarded, which is proper and no interference is required in it and requested to dismiss the appeal.

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

5. To prove the disability, the claimant has examined himself. He has stated that the accident was caused due to negligence of the driver of

the offending vehicle and due to accident, he has suffered four to five fracture injuries and he was unconscious. He further submitted that, initially, he took treatment ins Civil Hospital at Sangli, thereafter, he took treatment in the hospital of Dr. Ashok Patil for two to three months as indoor patient. Some surgeries were done on his thigh and leg. After the surgery, he visited the hospital of Dr. Patil as outdoor patient. Due to accidental injuries, he has suffered 75% permanent physical disability. Thereafter, there was problem in his thigh as cyst was developed in his thigh, hence, he took treatment of doctor – Shri G. S. Kulkarni and treatment was done on cyst. The appellant has spent Rs.35,000/- to Rs.40,000/- for the said treatment. Before the accident, appellant was selling fruits and he was getting Rs.200/- to Rs.250/- per day. Due to accidental injuries, his right leg has been shortened by three inches and his body below waist and right shoulder is completely disabled. The fingers of right leg have become useless. There is no cross-examination of this witness on the point of accidental injuries suffered by him.

5.1. The claimant has examined Dr. Ashok Patil at Exhibit-39. He has stated that the claimant was admitted in his hospital on 12th April 2002. He had sustained certain fractures on neck, femur of right side, right foot, left foot, right thigh etc.. He was also having a dislocation of right sacroiliac joint with pubic symphysis disruption. He was indoor patient from 12th April 2002 to 14th June 2002 in his hospital. The claimant was again admitted in his hospital as indoor patient for some period. He sustained around 75% permanent disability and he has issued disability certificate, which is at Exhibit-40. The hospital bill was worth Rs.1,18,460/-. In cross-examination, this witness admitted that the medical bill(Exhibit-41) does not contain date, he admitted that he has issued separate injury certificate to the claimant.

5.2. While dealing with the issue of income of the appellant/claimant, the Tribunal has considered monthly income of the appellant at Rs.100/- and considered income for 24 days, considering six days as holidays in a month. In my view, the appellant was a fruit hawker. Hawkers do not get holidays like government servants or other employees. Their family run on their daily income. The Tribunal should have considered income of 30 days while considering the income of the claimant, hence, I am considering Rs.3,000/- as monthly income of the claimant.

5.3. The Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimant is entitled for 40% future prospects.

5.4. The Tribunal has applied multiplier of 15. At the time of the accident, the claimant was 28 year old, hence multiplier of 17 should have been applied, hence, I am considering multiplier of 17.

5.5. The Tribunal has awarded Rs.1,50,000/- for hospital and medical expenses. The Tribunal has considered only 50% of actual expenses. In my view, the claimant was admitted in hospital for several times, hence, he is entitled for actual medical expenses of Rs.3,00,000/-. The Tribunal has not awarded future medical expenses. Considering the nature of injuries, the claimant is entitled for Rs.2,00,000/- for future medical expenses. The Tribunal has awarded Rs.35,000/- for loss of income during the bedridden period. It appears from record that the claimant was admitted in hospital for several months, hence, I am considering Rs.54,000/- (Rs.3000/- per month) for loss of income for 18 months. The Tribunal has not awarded amount for pain and suffering, I am considering Rs.1,00,000/- for the same. The Tribunal has not awarded amount for loss of enjoyment of life and discomfort due to shortening of leg, I am considering it at Rs.1,00,000/-. The Tribunal has not awarded travelling expenses, I am considering it at Rs.20,000/-. The Tribunal has not awarded amount for cost towards attendance, I am considering it at Rs.10,000/-. The Tribunal has not awarded amount for special food and diet, I am considering it at Rs.10,000/-.

5.6. The Tribunal has considered 10% contributory negligence of the claimant. I am unable to understand the observation of the Tribunal as offence was registered against the driver of the offending vehicle. Moreover, the driver of the offending vehicle did not enter the witness box to prove his case, hence, 10% contributory negligence of the claimant, considered by the Tribunal is erroneous and I hold that the accident occurred due to sole negligence of the driver of the offending vehicle.

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

Particulars	**Rs.**	**Amount**
Annual Income (Rs.3000/- pm. X 12(months x 17 (multiplier)	**Rs.**	612000.00
40% future prospects	**Rs.**	244800.00
Total	**Rs.**	**856800.00**
Hospital and Medical Expenses	**Rs.**	300000.00
Future Medical Expenses	**Rs.**	200000.00
Loss of income during bedridden period	**Rs.**	54000.00
For pain and suffering	Rs.	100000.00
Loss of Enjoyment of life and discomfort for entire life due to shortening of leg	**Rs.**	100000.00
For Special Food and Diet	Rs.	10000.00
Cost of Attendance	Rs.	10000.00
Travelling Expenses	Rs.	20000.00
Total Compensation	**Rs.**	**1650800.00**

The Tribunal has awarded Rs.3,00,000/-, if this amount is deducted from the amount of Rs.16,50,800/- considered by this Court, it comes to Rs.13,50,800/-. The claimant is entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The appellant/claimant is entitled for enhanced compensation of Rs.13,50,800/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight 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.)