

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1353 OF 2011

Tanaji s/o. Baliram Deshmukh
Age 40 years, Occu-Agri./Labour,
R/o. Dhanore, Tal – Madha, Dist - Solapur

... Appellant

Versus

- 1 Dattatraya Rajaram Jadhav
Age adult, Occu – Business
R/o. Post Wadapuri, Tal – Indapur, District - Pune
- 2 The Oriental Insurance Company
Akluj Branch, Tal – Malshiras, District - Solapur
- 3 Tulsabai Anant Misal
Age Adult, Occu – Business, District - Solapur
- 4 The New India Insurance Company Ltd.
Hutatma Smruti Mandir Complex, Park Chowk,
Solapur

... Respondents

.....

Mr. R.S.Alange, Advocate for the Appellant.

Mr. Devendranath S. Joshi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th MAY, 2024

ORAL JUDGMENT :

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

2. It is contention of learned counsel for the appellant/claimant that due to accidental injuries, the claimant has suffered 45% disability, due to disability the claimant is unable to do any work. The rod is inserted in the left leg of the claimant but the Tribunal has not considered

this fact. The Tribunal has not considered monthly income of the claimant and has not applied multiplier and has not awarded future prospects and lumpsum compensation is awarded which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2/Insurance Company that the doctors who have issued disability certificate had not examined the claimant, without examining the claimant the disability certificate is issued. The Tribunal has considered all the aspects while passing Judgment and Order. No interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order dated 10.12.2010 passed by the Motor Accident Claims Tribunal, Solapur (for short "**the Tribunal**") in M.A.C.P. No. 50 of 2001. To prove the disability the claimant has examined PW-3 Dr. Sanjay Khairnar at Exhibit-65. He has stated that he was working in Civil Hospital, Solapur and was one of the member of the Medical Board, which was meant for issuing physically disability certificate. He has issued disability certificate of 45% to the claimant. In cross examination he has admitted that he did only OPD examination of the claimant and on that basis Certificate is issued. The claimant has examined PW-4 Dr. Shashikant Khairadkar, he has stated that he was serving as a Civil Surgeon at Solapur. He was

authorized to issue disability certificate. He issued disability certificate to the claimant. The said certificate is at Exhibit-69. In cross examination he has admitted that he has not personally examined the claimant. While dealing with the issue of disability, the Tribunal has observed that PW-3 and PW-4 have admitted that they had not personally examined the claimant, on that ground the Tribunal has awarded lumpsum compensation of Rs.1,25,000/-. I am unable to understand the observations of the Tribunal as PW-3 is the member of the Medical Board and PW-4 is Civil Surgeon, both are doctors from Government hospital. They are the expert witnesses and they have issued disability certificate as per the disability of the claimant. Their evidence cannot be disbelieved. Hence, I am considering disability of the claimant at 45%.

To prove the income, the claimant has examined himself at Exhibit Nos. 40. He has stated that he was agriculturist and doing milk business. The claimant has examined witness Sajjan Deshmukh at Exhibit-60. He does the milk business under the name and style of Jagdamba Mahila Sahakari Doodh Utpadak Sanstha, Dhanure. He stated that the claimant was doing milk business and earning Rs.1,000/- to Rs.1,200/- per day. In cross examination, he admitted that he has not produced documents on record to show income of the claimant. In my view, claimant was agriculturist and he was doing milk business. Considering the evidence on

record, I am considering Rs.3,000/- as monthly income of the claimant. As per the view of 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. The claimant has suffered 45% disability but the Tribunal has not awarded compensation for pain and suffering. I am considering it at Rs.15,000/- for pain and suffering and for conveyance Rs.15,000/- and Rs.10,000/- for special diet.

5. Considering the above calculations, the claimants are entitled for following compensation.

Particulars	Rs.	Entitlement
Monthly Income	Rs.	3,000.00
Annual Income X 12	Rs.	36,000.00
40% Future prospects	Rs.	14,400.00
Total	Rs.	50,400.00
Multiplier Rs.50,400 X 17	Rs.	8,56,800.00
45% disability	Rs.	3,85,560.00
Pain and suffering	Rs.	15,000.00
Conveyance allowance	Rs.	15,000.00
Special Diet	Rs.	10,000.00
Total	Rs.	4,25,560.00
Less compensation awarded by the Tribunal	Rs.	1,25,000.00
Total enhanced amount	Rs.	3,00,560.00

Considering the above calculations, claimant is entitled for enhanced amount of Rs.3,00,560/-.

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

ORDER

- i. The appeal is allowed.
- ii. The Claimant is entitled for enhanced amount of Rs.3,00,560/- @ 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 accrued interest thereon within 6 weeks from the receipt of this order.
- iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The appellant/claimant shall pay the deficit Court fees on enhanced amount as per rule.

7. The appeal is disposed of. All pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)