

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1970 OF 2003

Mr.Ganesh Mohan Bagade Age-25 years, Occupation : Business R/at 59, Bhavani Peth, Satara	} } }	(Org. Petitioner)Appellant
<i>Versus</i>		
1. Maruti Keshav Bhise Age-Adult, Occupation : Driver R/at Post Rehabilitated, Kamathi-Tarf-Parli, Near Nimsode Vaduj, Taluka & District-Satara	} } }	
2. Mr.Aphjal Tawkal Bhagwan Age-Adult, Occupation Tracks Owner R/at 59, Budhawar Peth, Satara	} } }	
3. The Oriental Insurance Co. Satara Branch, Keshav Sona Complex, Near Jai- Vijay Talkies, Satara, District-Satara	} } }	(Org. Opponents)Respondents

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Mr.Prashant Chavan a/w Mr.Ravindra R. Chile i/b Mr.Vinay M. Bhate,
for the Appellant.

Mr.Viraj Shelatkar i/b Mr.Ganesh K. Gole, for Respondent No.1.

Mr.D.S. Joshi i/b Mr.Indrajeet R. Kulkarni, for Respondent No.3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 20th FEBRUARY, 2024.

ORAL JUDGMENT :-

. By way of this Appeal, the Appellant-Claimant is seeking

enhancement of compensation.

2. It is contention of the learned counsel for the Appellant that, the Appellant has suffered 25% permanent physical disability due to accidental injuries. The Appellant was swimming coach and he was boxer. He had participated in the competition of the boxing. Due to accidental injuries he could not pursue his hobby of boxing and could not coach swimming. The Tribunal has not considered these facts and awarded compensation on lower side. The learned counsel further submitted that the Tribunal has not awarded loss of earning hence, requested to allow the Appeal.

3. It is contention of learned counsel for Respondent-Insurance Company that, no documents were produced on record to show that the deceased was coaching swimming and he had participated in the boxing competition. The Tribunal has considered all the aspects while passing the order. No interference is required in it. The learned counsel further submitted that, there is no functional disability. Hence, requested to dismiss the Appeal.

4. The learned counsel for Respondent No.1 adopted the submissions of the learned counsel for the Respondent-Insurance

Company.

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

6. It is Claimant's case that, on 3rd August 1998 at about 2.15 p.m. the Claimant and his friend were proceeding on Export Yamaha Motorcycle to Yavteshwar to Satara. Mr.Sandeep was driving the motorcycle and the Claimant was pillion rider. At relevant time, one trax jeep bearing No.MH-11/0-5653 came from opposite direction in high and excessive speed and gave dash to the motorcycle of the Claimant. Due to dash, the Claimant suffered grievous injury. Offence was registered against the driver of the jeep.

7. It is contention of the learned counsel for the Claimant that, due to accidental injuries his left leg is shorten by one inch and he has suffered 20% to 30% disability. To prove his disability the Claimant has examined doctor who treated him. The Respondent-Insurance Company has not challenged disability of the Claimant. While awarding compensation the Tribunal has awarded compensation of Rs.1,70,000/- under various head. The Tribunal has not awarded

compensation for loss of earning and under other heads. It has come on record that at the time of the accident deceased was studying in 12th standard. It has come on record that due to accidental injuries, he cannot bend his knee and he cannot participate in the body building and swimming competition. There is no cross-examination on the point of bending knee of the Claimant. As Claimant has suffered 25% permanent physical disability and it has come on record that his movements are restricted. At the time of the accident Claimant was 20 years old. So the effect of disability will be on his future life. Hence, I am considering Rs.2,50,000/- for loss of earning and Rs.1,00,000/- for loss of mental agony and loss of career, pain and suffering.

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant is entitled for enhanced compensation of Rs.3,50,000/- @ 7.5% interest per annum from the date of the filing of Claim Petition till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit enhanced compensation amount along with accrued interest thereon, within six weeks from the receipt of this order.

(iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)