

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

FIRST APPEAL NO.717 OF 2015

The National Insurance Co. Ltd.	}	
ROII, Sterling Building, 5 th Floor, Fort,	}	
Murzban Street, Mumbai-400 001.	}	...Appellant

Versus

1. Shri.Hariba Shrirang Pawar	}	
Age-37 years, Occ : Nil	}	
R/o. Dhanawadewadi, Post-Asangaan,	}	
Taluka-Satara	}	
2. Shri.Ashok Hanmant Salunkhe	}	
Age-38 years, Occ : Agri Karandwadi, Post-	}	
Degaon, Taluka, District-Satara.	}	...Respondents

Ms.Poonam Mital, for the Appellant.
Mr.Pradeep S. Gole, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th JANUARY 2024

ORAL JUDGMENT :-

1. The issue involved in the Appeal is income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant that, the Tribunal has considered monthly income of

deceased at Rs.7,130/- per month without any evidence on record, which is on higher side. The learned counsel further submitted that, the Tribunal has awarded Rs.1,00,000/- for pain and suffering, Rs.10,000/- for conveyance, Rs.1,00,000/- for future medical treatment, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent-Claimant that, due to accidental injuries the Claimant has suffered 40% permanent disability. He has lost his job. He is unable to stand for long time. He requires treatment on and off. He has not completely cured from the disability. The claimant was earning Rs.10,000/- per month. The Tribunal has considered at Rs.7,130/- which is on lower side. As Claimant did not want to prolong the matter, hence, he has not filed Appeal for enhancement of the amount. Hence, requested to dismiss the Appeal.

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

5. The Appellant-Insurance Company has not disputed 40% disability of the Claimant. To prove the income of the Claimant, the Claimant examined himself at Exhibit-28 and employer Shamrao Tukaram Salunkhe at Exhibit-46. He has stated that, Claimant was working in his factory and he was earning Rs.310/- per day, thereby his monthly salary was Rs.10,000/-. The Tribunal while dealing with this issue has observed that, muster-roll at Exhibit-50 shows that, the Claimant has received Rs.7,130/- salary in the month of November 2010. Hence, the Tribunal has considered monthly salary of Claimant at Rs.7,130/-. I do not find infirmity in it.

6. The Tribunal has awarded Rs.1,00,000/- for pain and suffering, Rs.10,000/- for conveyance and Rs.1,00,000/- for future medical treatment. As Claimant has suffered 40% permanent physical disability, he has lost his job. The Tribunal has awarded Rs.1 lakh for pain and suffering, it is on higher side. Hence, I am considering it at Rs.75,000/- for pain and suffering and Rs.25,000/- is excess amount the Appellant is entitled for this amount.

7. In view of above I pass following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) The Appellant-Insurance Company is permitted to withdraw Rs.25,000/- along with proportionate interest out of the deposited amount. The Claimant's are permitted to withdraw balance amount alongwith proportionate interest.
- (iii) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)