IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2476 OF 2005

Vijay Tukaram Bodhgire)
Age: 28 years, Occupation: Service)
R/o. Takali Road, Sawant Plot, Miraj)
Tal. Miraj, District: Sangli)....Appellant
(Original Claimant)

Versus

1. Sanjay Appaso Jadhav)
Age: 26 years, Occ: Sevice)
R/o. Takali, Tal. Miraj, Dist. Sangli)

2. Laxmibai Ramchandra Jadhav)
since deceased through Lrs.)
2. A) Annaso Ramchandra Jadhav)
R/o. Dhavali, Tal. Miraj)
District : Sangli.)

3. The United India Insurance Co.)
Branch Jaysingpur, Ram Mandir)
Building, 9th lane, Jaysingpur)
Tal. Shirol, District: Kolhapur.)....Respondents
(Orig. Opponents)

Mr. Umdesh R. Mankapure a/w Ms. Bhavika Shinde, Advocate for the Appellant.
Mr. Prashant R. Suryawanshi i/b Mr. Gajanan M. Savagave, Advocate for the Respondent Nos. 1 & 2(A).
Ms. Poonam Mital, Advocate for the Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th MARCH, 2024.

Oral Judgment. :

1. By way of this appeal, Appellant/Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant that due to accidental injuries Claimant has suffered 84% physical permanent disability. Though, the disability is 84% there is 100% functional disability. While awarding compensation the Tribunal has observed that as claim petition was filed for Rs.1,00,000/- hence, Claimant is not entitled for more than Rs.1,00,000/- and has awarded Rs.1,00,000/- compensation, which is erroneous hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.3/Insurance Company that while passing the order Tribunal has considered all the aspects on that basis, the Tribunal has passed order and no interference is required in it.

4. Learned counsel for the Respondent No.1 & 2(A) submits that appropriate order be passed. At the time of accident, the offending vehicle was insured with the Insurance Company.

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

6. It is Claimant's case that due to accidental injuries, the Claimant has suffered 84% permanent physical disability. To prove, it Claimant has examined PW-4 Dr. Arun Sonar. The Respondent/Insurance Company has not challenged the disability of the Claimant.

7. The Tribunal has considered evidence on record and has come to the conclusion that the Claimant is entitled for

compensation of Rs.2,82,556/- but, while passing the order Tribunal has held that the Claimant has restricted his claim to the extent of Rs.1,00,000/- hence, he is entitled for that amount and on that basis, compensation of Rs.1,00,000/- is awarded. In my view, it is erroneous. It is settled principle of law that if the Claimant is entitled for more compensation than claimed amount, he is entitled for it. To prove the income, the Claimant has examined himself at Exhibit-33, he has stated that he was in service of at Suyog Offset Printing, Sangli-MIDC and he was getting monthly salary of Rs.4200/- per month and he was getting Rs.2500/- to Rs.3,000/- per month of over time and, he was getting increment of Rs.500/- per year. Nothing elicited in his cross-examination. In support of his evidence, the Claimant has examined PW-2 Suresh Irale the owner of "Suyog Offset Printers and Containers" at Exhibit-40. He has stated that the Claimant Vijay was working as an operator in his business and he was paying him Rs.4200/- per month with an increment of Rs.200/- to Rs.250/- per annum. The salary certificate is at Exhibit-41. In cross-examination, he admitted that the Claimant was covered under E.S.I. benefits and his business was not always earning profits in each year. From the evidence of these witnesses, it appears that the

Claimant was working as an operator with PW-2 and he was getting Rs.4200/- per month. Hence, I am considering the salary of Claimant at Rs.4,200/- per month. Due to physical permanent disability of 84%, the Claimant has lost his job. So, it is 100% functional disability hence, the Claimant is entitled for 40% future prospects along with loss of income. At the time of accident, the Claimant was 27 year old, the proper multiplier is 17. It has come in the evidence of PW-3 Dr. Avinash Patil that the petitioner has paid Rs.86,866/- on his medical expenses. He has further stated that the petitioner has spend Rs.1,69,500/- on his operations charges and Rs.20,960/- on medical bills. The bills are at Exhibit-57.

8. While considering the medical bills, the Tribunal has considered total medical expenses to Rs.1,16,866/-. I am unable to understand the observations of the Tribunal as it has come in the evidence of PW-2 Doctor that the Claimant has spent of Rs.2,56,366/- for medical expenses hence, I am considering this amount as medical expenses. The Tribunal has awarded Rs.5,000/- for pain and suffering. Considering the disability of the Claimant, I am considering Rs.50,000/- for pain and suffering. The Tribunal has not awarded compensation for loss of amenities in life, I am

considering it at Rs.50,000/-. The Tribunal has not awarded for special diet and conveyance, I am considering it Rs.25,000/-. The Tribunal has not awarded amount for loss due to disfigurement, I am considering at Rs.50,000/-.

9. Considering the above calculations, the Claimant is entitled for following compensation.

Monthly Income	Rs.4,200/-
Add: 40% future prospects	Rs.1680/-
Total Income monthly	Rs.5,880/-
Annual Income	Rs.70,560/-
Multiplier 17	Rs.11,99,520/-
Medical Expenses	Rs.2,56,366/-
Physical pain and suffering	Rs.50,000/-
Loss of amenities in life	Rs.50,000/-
Special diet & conveyance	Rs.10,000/-
Loss due to disfigurement	Rs.50,000/-
Total compensation	Rs.16,15,886/-
Less awarded by the Tribunal	Rs.1,00,000/-
Enhanced amount.	**Rs.15,15,886/-**

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

ORDER

i. Appeal is allowed.

ii. The Claimant is entitled enhanced amount of Rs.15,15,886/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

iii. The Respondent No.3/Insurance Company shall deposit the compensation amount along with accrued interest thereon, within eight weeks after receipt of the order.

iv. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

v. The Claimant shall pay Court fees on enhanced amount as per Rule.

11. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)