

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 1838 OF 2024

Kamal Vishnu Shendge]
Age – 56 Years, Occ – Nil.]
R/o- Vadgaon (Kati),]
Tal: Tuljapur, Dist: Osmanabad,]
.... Appellant
(Original
Claimant)

Versus

1. Sayyad Dastagir Honmurgi]
Age: 51 Years, Occ: Business]
R/o. D/2, 188 Bhavani Peth,]
Maddl Vasti, Solapur.]
2. Rahul Anil Siddhe]
Age: 33 Years, Occ: Business]
R/o. Shahir Vasti, Bhawani Peth,]
Solapur.]
4. United India Insurance Co. Ltd.]
R/o. Janta Shopping Center,]
Navipeth, Solapur - 413007]
.... Respondents
(Original
Respondents)

Mr. R. S. Alange, for the Appellant.
Mr. Rahul Mehta i/b KMC Legal Venture, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th NOVEMBER, 2024.

ORAL JUDGMENT :

1. By this appeal, the Appellant is seeking enhancement of compensation.

2. Learned counsel for the Appellant submits that due to accidental injuries, the Appellant has suffered 20% permanent physical disability. The treating doctor was examined to prove the disability. He has stated that, the Appellant was operated twice for the fracture injuries and rod was inserted in the right leg of the Appellant. The Appellant was admitted in the hospital for a long period. The Appellant was farmer and she was doing labour work but the Tribunal has considered Rs.6,000/- as monthly income of the Appellant, which is on lower side. Learned counsel further submitted that special diet, loss of enjoyment in life, attendance and transportation are not given. The amount of Rs.10,000/- for pain and suffering is given by the Tribunal, it is on lower side. Moreover, the Tribunal has considered the disability at 10%, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent

Insurance Company that the Appellant's fractured injuries united, her leg was shortened by half inch. As per the medical procedure, shortening of the leg by half inch would be nil disability. The tribunal has passed well reasoned order. Considering the evidence on record, no interference is required in it and requested to dismiss the appeal.

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

5. To prove the disability, the Appellant has examined Dr. Raut (AW-2) at Exhibit-44. He has stated that, the Appellant was admitted in his hospital between 8th October, 2014 to 18th October, 2014. There was fracture of upper third of tibia on right side and the Appellant was operated. He had given 20% permanent disability certificate, which is at Exhibit-47. He further stated that the Appellant was walking with stick in hand and there is shortening of right lower limb by half inch and there was tibia vara with osteo arthritis of knee joint. He further stated that fracture is united with implant in situ. While dealing with the issue of disability of Appellant, the Tribunal has observed that the leg of the Appellant

was shortened by half inch as per medical term, it would be nil disability on that count, the Tribunal has considered the disability of the Appellant at 10%. I am unable to understand, the observations of the Tribunal when the treating doctor has given the disability certificate to the Appellant as 20%. He has stated that, there was shortening of the right leg of the Appellant and she was using stick while walking, it shows that due to accidental injuries, the Appellant is unable to do work, as she was doing before the accident. The Tribunal has not awarded future prospects while calculating the compensation nor amount for loss of enjoyment in life, attendance, special diet is awarded. Considering these facts, the Appellant is entitled for Rs.1,00,000/- lump sum amount as enhancement under all heads.

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

ORDER

- i. Appeal is allowed.
- ii. The Appellant/Claimant is entitled for enhanced amount of Rs.1,00,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

- iii. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The Appellant/Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Appellant shall pay the deficit Court's fee, if any.
 - vi. Record and Proceedings be sent back to the trial Court.
7. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)