

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.385 OF 2013**

	Bapurao Vasant Pawar Age about 28 years, Occu: Agri. & Edu. R/o. Shinganwadi, Tal: Patn, Dist: Satara	...	Appellant (Org.Claimant)
	Versus		
1	R. Krishna Veni R Rajmani, C/o. S.N.R. Transport No.15, 14 th Cross, Second Main Road, Lakka Sandra, Bangalore.		
2	United India Insurance Co.Ltd. Karad Branch, Karad.	...	Respondents

Mr. Ramadas Shelke, Advocate for the Appellant.

Mr. Ketan Joshi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st MARCH, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant/claimant that due to the accidental injuries, the claimant has suffered 100% permanent disability but the Tribunal has considered 50%, which is erroneous. Learned counsel further submitted that due to accidental injury, the left hand of the claimant is amputated, his left leg is paralysed

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due to fracture injuries and there was head injury. After the accident, the claimant is bedridden, he cannot walk nor can he stand. The Tribunal has awarded compensation under others heads on lower side. Learned counsel further submitted that the Tribunal has considered 75% negligence of the claimant and 25% of the driver of the offending truck. An offence was registered against the driver of the offending truck. The police papers produced on record shows negligence of the driver of the truck but the Tribunal has not considered these facts. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that the accident occurred due to sole negligence of the claimant as he gave dash to the left side of the truck. The claimant was driving his motorcycle in high and excessive speed. He could not control the speed and gave dash to the truck, so there is no question of negligence of the driver of the truck. Learned counsel further submitted that the claimant is claiming compensation for prosthetic arm. The said issue was not raised before the Tribunal. Learned counsel submitted that the Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

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

5. It is claimant's case that on 1st July 2003, the claimant was proceeding from Umbraj towards Satara on his motorcycle bearing No.MH-11-W-138. When he reached near Mori No.712 near Rajpurohit Dhaba on Pune Bangalore Highway, at that time, one truck bearing No.KA-01-D-4443 was coming from Umbraj side road, which was straight but the driver of the said truck was driving it negligently and in rash manner. He speedily turned the said truck towards western side towards Rajpurohit Dhaba and gave dash to the motorcycle of the claimant. Due to the said dash, the motorcycle was badly damaged and the claimant was seriously injured. He was admitted in Civil Hospital at Satara, thereafter he was shifted to Krishna Hospital, Karad, Shushrusha Hospital, Dadar (Mumbai), Mukhtangan Accident Hospital, Satara and Krantisingh Nana Patil Rugnalaya, Satara and then to Bombay Hospital, Mumbai. The claimant took treatment for four years and the said treatment is still going on. An offence was registered against the driver of the offending truck.

5.1. To prove the negligence of the truck driver, the claimant examined himself at Exhibit-22. He has stated that he was proceeding on motorcycle, at the relevant time, the offending truck was proceeding on the same road and the driver of the offending truck suddenly took turn towards the Western side at Rajpurohit Dhaba, therefore, his motorcycle dashed to the said truck. In cross-examination, he admitted that his motorcycle dashed to middle portion of the said truck on the cleaner's

side. He had seen the truck from the distance of 10 feet. Respondent No.2-Insurance Company has not examined the truck driver to prove the negligence of the claimant. While dealing with the issue of negligence, the Tribunal has observed that the claimant dashed against the middle portion of the truck and the claimant had seen the truck from the distance of 10 feet, hence, the accident occurred due to contributory negligence of the claimant and the truck driver. On that basis, the Tribunal has considered 75% negligence of the claimant and 25% negligence of the truck driver. I am unable to understand the observation of the Tribunal, as admittedly, after enquiry of the accident, the police had registered the offence against the driver of the offending truck. It is claimant's case that he was going on the straight road and the offending truck suddenly took right turn, hence, the claimant dashed against the said truck. It does not mean that there was negligence of the claimant. Before taking the turn, the driver of the offending truck should have given indicator about the turning of the truck, it was not given. Moreover, the driver did not step into the witness box to prove the negligence of the claimant nor to prove that while taking turn, if he had given indicator or not. Hence, I am considering 100% negligence of the driver of the offending truck.

5.2. While dealing with the issue of disability, the Tribunal has observed that the disability certificate issued by the team of experts consisting of Civil Surgeon, President/RMO/Member and Specialist in Subject/Member at "Exhibit 21-A", therefore, it can be accepted and

permanent disability is mentioned as 100%. The Tribunal observed that 100% disability is pertaining to the limb, it is not with reference to whole body, therefore, with reference to whole body, disability can be assessed at 50%. On that basis, the Tribunal has considered permanent disability at 50%. I am unable to understand the observations of the Tribunal as medical board of Civil Hospital has issued 100% disability certificate. It has come on record that due to accidental injury, left hand of the claimant is amputated, his left leg is paralysed due to fracture injuries, he is unable to stand or walk and there was head injury. Hence, I am considering 100% functional disability of the claimant as opined by the expert board.

5.3. At the time of the accident, he was 25 year old and he was labourer, the Tribunal has considered his monthly income at Rs.3,000/-, hence, I am considering the same income.

5.4. The Tribunal has awarded compensation on the lower side as well as Tribunal has not awarded loss of income under other heads, hence, I am considering it as follows:

Particulars	Rs.	Amount
Future Earning (Rs.3000/- pm x 12 x17(multiplier)	Rs.	612000.00
Pain and Suffering	Rs.	200000.00
Medical Expenses	Rs.	352000.00
Conveyance	Rs.	50000.00
Special Diet	Rs.	50000.00
Loss of Amenities	Rs.	250000.00
Attendants	Rs.	20000.00

Cost of Artificial Limb and its maintenance	Rs.	1200000.00
Loss due to Disability and Disfigurement	Rs.	50000.00
Future Prospects (40%)	Rs.	244000.00
Total Compensation.		3028000.00

5.5. The Tribunal has awarded Rs.1,69,000/-, if this amount is deducted from the amount of Rs.30,28,000/- considered by this Court, it comes to Rs.28,59,000/-. The claimant is entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The claimant is entitled for enhanced compensation of Rs. 28,59,000/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.2 – Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
5. The claimant shall pay court fees on enhanced amount as per Rules.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)