SHANTANU SHANKARSA DHUDUM
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 348 OF 2018

National Insurance Company Limited)
Mumbai Regional Office I,)
5th Floor, sterling Cinema Bldg,)
65, Murzban Road, Fort)
Mumbai – 400 020)....**Appellant**
(Orig. Opp. No.2)

Versus

1. Mr. Jayanand malhari Kamble)
Age: 38 years, Occu: Service)
R/o: 48, Raghavendra Nagar,)
Bijapur Road, Solapur.)...Orig. Claimant

2. Mr. Madhusudhan CH)
Age:- Adult, Occ: Business,)
R/o. Plot No.5, Block No.24,)
Durga Bhavani Transport,)
Auto Nagar, Vanasthalipuram,)
Hyderabad. Andhra Pradesh)
(Now Telangana State).)...Orig. Opponent No.1.
....**Respondents**

Mr. Amol Gatne for the Appellant.
Mr. R. S. Alange for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is without disability certificate, the Tribunal has considered 40% disability of the Claimant and while awarding compensation, pension amount is not deducted from income of the Claimant.

2. It is contention of learned counsel for the Appellant that as per the Claimant's case he has suffered 40% permanent disability due to accidental injury, no disability certificate was produced on record nor doctor has been examined to prove the 40% permanent disability of the Claimant but, the Tribunal has considered 100% functional disability of the Claimant and on that basis compensation is awarded, which is on higher side. Learned counsel further submitted that it has come on record that after the accident the Claimant is getting pension of Rs.9,000/- per month but, this fact is not considered by the Tribunal while calculating monthly income of the Claimant. Hence, requested to allow the appeal. He relied on ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343.***

3. It is contention of learned counsel for the

Respondent/Claimant that Claimant was working in the Indian Army as Subhedar and after the accident he was admitted in Military Hospital, Pune. The medical board of military hospital has certified that the Claimant has suffered 40% permanent disability. Due to disability the Claimant has been terminated from the service. He has lost his job. Disability considered by the Tribunal is proper and no interference is required in it. Learned counsel further submitted that pension amount cannot be deducted from the income of the Claimant. As the Claimant had promotional benefits and he had remaining service but due to his early termination due to disability before his retirement, he has suffered huge monitory loss. The judgment and order passed by the Tribunal is legal and valid and no interference is required in it. He relied on ***Vimal Kanwar and Ors vs. Kishore Dan & Ors. (2013) 7 SCC 476***.

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 his case, the Claimants Jayanand Kamble examined himself at Exhibit-24, he has stated that on 29th August 2010. He was going to Udgir for attending ceremony, he was

travelling in jeep, at that time at incident spot one truck bearing registration No. AP-29-TA-5299 came from opposite side in high speed and in rash and negligent manner without observing the traffic rules. The driver of the truck lost his control and came towards wrong side of the road and gave dash to the jeep, in which he was travelling, due to dash he has suffered injuries. He was initially admitted in Latur Critical Centre, at Latur. Thereafter, he was shifted to Solapur for medical treatment in Dhandore Hospital. Thereafter he was shifted to Poona Commando hospital Wanwadi. He has undergone operation and he has spent more than Rs.1,00,000/- for his medical treatment. He further stated that due to pemanent physical disability suffered by accidental injuries, he could not complete his remaining service, he has been terminated from service by the department. His monthly salary was of Rs.35,000/- and 7 years service was remained. In support of his evidence, the Claimant has examined PW-2 Gundu Sonkamble at Exhibit-45 Subhedar in Army. He has stated that he knows the Claimant, he has suffered permanent physical disability due to accidental injuries, as per the Army Rules, Court of enquiry was ordered. This witness was Board member of the same. The Claimant had taken treatment in army hospital and he was assessed for his disability, he had sustained 40% permanent physical disability. In the Court of enquiry, it was found that the Claimant will not do his duty in Punch sector in Jammu and Kashmir. His 7 year service was remained, he was dismissed from service due to his physical disability. This witness further stated that the Claimant could not get two promotions due to his early dismissal from service. The true copy of enquiry report is at Exhibit-46. The salary statement of the Claimant is at Exhibit-47.

In cross-examination this witness admitted that, if there is dismissal on the ground of physical disability, then written order is given. While dealing with the issue of disability, the Tribunal has observed that the Claimant has been removed from service due to physical disability. The Claimant has suffered 40% disability. The copies of Court of enquiry are at Exhibit-46. The board member has been examined, there is no reason to disbelieve his evidence. The Claimant has been removed from the service, only on the ground of his physical disability. It will have to be held that he has sustained 100% financially disability. There is total loss of income of the Claimant. Though, he is getting pension, it cannot be considered because the Claimant has been removed from the service as per the service condition. Hence, the Tribunal has considered 100% functional disability of the Claimant. I do not find infirmity in it.

6. In my view, the Claimant has suffered 40% physical permanent disability due to accidental injuries, because of physical disability he has been removed from the service, so it is 100% financial disability. It is contention of learned counsel for the Appellant that no disability certificate was produced on record to prove physical disability, nor doctor was examined to prove it. In my view, though disability certificate is not produced on record or concerned doctor is not examined to prove the disability of the claimant but it has come on record that the claimant was working in Army. He was treated in army hospital. After treatment when it found that he has suffered disability as per Army Rules, enquiry committee was appointed and in that enquiry committee it found that due to physical disability he is unfit for service and he has been removed from service, PW-2 who was member of the enquiry committee has stated the same facts hence, though disability certificate is not produced on record it cannot be said that there is no merit in claim of the claimant. Moreover, the Appellant/Insurance Company has not

disputed about happening of accident and disability suffered by the Claimant.

7. I have gone through the case laws cited by the learned counsel for the Appellant/Insurance Company. The facts of cited case and case at hand is different, as in the present case the board member who was part of the enquiry committee, who has removed the Claimant from service has stated that, due to physical disability of the Claimant, he has been removed from service. The Claimant has suffered 100% financial disability. It is contention of learned counsel for the Appellant that the Claimant is getting pension amount, it be deducted from his income. In my view, as the claimant is getting pension amount, it cannot be considered as his income, hence I am deducting this amount which the claimant has received for severn years.

8. Considering above calculations, the claimant is entitled for following compensation.

Monthly income	Rs.28,521/-
Income Tax deducts	Rs.3814/-
Net Salary	Rs.24,707/-

Round up	Rs.24,710/-
Annual Income Rs.24,710/- X 12	Rs.2,96,520/-
Add: 30% future prospects	Rs.88,956/-
Total round up	Rs.3,85,500/-
Multiplier Rs.3,85,500/- X 14	Rs.53,97,000/-
Pain and suffering	Rs.30,000/-
Towards disability	Rs.20,000/-
Travlling Expenses	Rs.5,000/-
Medical Bills	Rs.12,360/-
Attendant charges	Rs.5000/-
Total compensation	Rs.54,69,360/-
Less pension amount awarded by the tribunal	Rs.8,01,864/-
Enhanced amount	Rs.46,67,496/-

The Appellant/Insurance Company is entitled for this amount.

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

ORDER

i. Appeal is partly allowed.

ii. The Appellant/Insurance Company is permitted to withdraw Rs.8,01,864/- with proportionate interest.

iii. The Claimants are permitted to withdraw balance amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

10. Learned counsel for the Appellant requested to stay the order as the accident occurred in the year 2010. The Claimant has lost his job, due to accidental injury. Hence, I am not inclined to grant stay.

11. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)