IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1579 OF 2011

	National Insurance Company Ltd. Regional Office No.2, Sterling Cinema Building 5th Floor, 65 Murzban Street, Fort, Mumbai-400 001	… Appellant (Original Opponent No.2)
	Versus	
1	Shri. Mahesh M. Kakkad Residing at B-208, Rishabh Apartment No.1 Above Veena Hotel, Bhayander – West, Pin : 401 101	… (Original Applicant)
2	Mr. Santosh Moteshwar Rakvi (office) Ananda Shree Ram Mandir Road Bhayander - West Residence at : 108, Mohan Shankar Kutir Rly Phatak – Police Station Road Bhayander – West, Pin – 401 101 (As per Court's order dt. 26.4.24 F.A. abated against R.No.2)	… (Original Opposite No.1)

WITH
FIRST APPEAL NO. 61 OF 2011

	Mahesh M. Kakkad Age 37 years, Residing at B-208, Rishabh Apartments No.1, Above Veena Hotel, Bhayander, Pin-401101 (Original Applicant)	… Appellant
	Versus	
1	Mr. Santosh Moteshwar Rakvi Off. Anand Shree, Ram Mandir Road, Bhayander (West) – 401 101 AND Res. Mohand Shankar Kutir, Rly. Phatak Police Station Road, Bhayander (West)- 401 101	
2	National Insurance Co. Ltd. Reg. Off : Sterling Cinema Bldg., Murzbaan Path,	

Fort, Mumbai -400 001
(Original Insurer) | ... Respondents

…………..

Mr. Rahul Mehta i/b. KMC Legal Venture for Appellant in FA/1579/2011 and for Respondent No.2 in FA/61/2011.
Mr. Rahul D. Motkari a/w. Ms. Manasi Pawar, Advocate for Appellant in FA/61/2011 and for Respondent No.1 in FA/1579/2011.

CORAM : SHIVKUMAR DIGE, J.
DATE : 4th APRIL, 2024

ORAL JUDGMENT :

1. The appellant/ insurance company has preferred this appeal against the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). The claimant has also preferred cross appeal for enhancement of compensation. As appeal and cross appeal are against the same Judgment and Order, I am deciding it by this common Judgment.

2. It is contention of learned counsel for appellant that accident occurred due to sole negligence of the claimant but the Tribunal has not considered this fact. Learned counsel further submitted that the Tribunal has considered yearly income of the claimant at Rs.1,00,000/- without any evidence on record which is on higher side. Learned counsel further submitted that the Tribunal has awarded medical expenses without any evidence on record. Learned Counsel further submitted that the Tribunal has awarded compensation on higher side under other heads without any evidence, hence requested to allow the appeal.

3. It is contention of learned counsel for respondent/claimant that claimant was working as a Senior Fabric Co-ordinator and he was earning Rs.11,500/- per month. The income tax returns are filed on record to prove the income of the claimant. Learned counsel further submitted that accident occurred due to sole negligence of driver of offending vehicle. The offence was registered against the driver of offending vehicle. To prove the negligence of claimant, the driver of offending vehicle did not enter into the witness box. Learned counsel further submitted that due to accidental injuries the claimant has suffered 80% permanent physical disability, his right leg is amputated. Though, the claimant has suffered 80% permanent physical disability his functional disability is 100%. He is suffering from ailment of incontinence due to which the claimant has no control on his urination and motion. He has to use diaper constantly. He further submitted that due to disability, 24 hours attendance is required to the claimant but the Tribunal has not considered this fact and awarded compensation on lower side. Hence, requested to allow the cross appeal and dismiss the appeal filed by the Insurance Company.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal and written submissions filed by both the learned counsel. It is claimant's case that on 19.12.2000 at about 8:30 p.m. the claimant was returning to his home on motorcycle, he was riding the motorcycle with due care and caution. When he reached near Sai Petrol Pump, one Tanker bearing No.MH-04-H-3065 came in high and excessive speed. The driver of offending tanker was driving it in a rash and negligent manner. The offending tanker gave dash to the motorcycle from back side, due to forceful dash the claimant crushed on the road and sustained multiple injuries. The offcence was registered against the driver of offending tanker. It appears from the record that the information of the accident was given to the police by driver of offending tanker. In the said information he has stated that when he was proceeding on the road, the claimant was riding on motorcycle on left side of the tanker, at that time the motorcycle of the claimant came under the rear wheel of the tanker and the claimant was injured. After the information, police made an enquiry about the incident and thereafter police registered offence against the driver of offending tanker. The spot panchanama of accident is at Exhibit-20-A. It shows that the driver of offending tanker had given false information to the police about the accident. To prove the negligence of driver of tanker, the claimant has examined himself. He has stated that the driver of offending tanker gave dash to his motorcycle from back side due to which accident occurred. Nothing elicited in cross examination of the claimant to show that accident occurred due to his negligence. The statement of claimant is supported by the police papers. Moreover, to prove the negligence of the claimant, driver of offending tanker did not step into the witness box, hence, I do not see merit in the contention of learned counsel for the appellant/Insurance company that accident occurred due to contributory negligence or sole negligence of the claimant.

5. To prove the income, the claimant has examined himself. He has stated that at the time of accident he was working as a Senior Fabric Coordinator with Star Plus Holding Co. and he was earning salary of Rs.11,500/- per month. He has produced income tax returns of year 1997-98, 1998-99, 1999-2000, 2000-01 to prove the income. In support of his evidence the claimant has examined AW-3 Vishwas Lele at Exhibit-33, he has stated that he was Manager H.R. and Admn., in Sonal Garments. He further stated that the claimant was working in their company and was drawing salary of Rs.11,500/- per month. He has further stated that earlier their company's name was Star Plus Holding but later on name of Star Plus Holding Company has changed to Sonal Garments. Nothing elicited in the cross examination of this witness.

The claimant has examined AW-2 Yogesh Motani, Chartered Accountant at Exhibit-16. He has stated that claimant was his client and he used to file income tax returns of the claimant. He produced income tax returns of the claimant for the year 1996-1997 to 2000-2001. In cross examination he has admitted that the returns are prepared under the guidance of his father by his employee. While dealing with the issue of income of the claimant, the Tribunal has observed that income tax returns produced on record shows the yearly gross income of the claimant was Rs.1,00,000/-, on that basis the Tribunal has considered yearly income of the claimant at Rs.1,00,000/-. I am unable to understand the observations of the Tribunal as it has come on record that the claimant was working as a Senior Fabric Coordinator and he was getting salary of Rs.11,500/- per month. AW-3 supports the contention of the claimant. The income tax returns produced on record shows the salary income, it is mentioned in the income tax returns, hence I am considering Rs.11,500/- per month as income of the claimant. At this stage, learned counsel for the appellant/Insurance company vehemently submits that there should be deduction from the salary income of professional tax and income tax, hence requested for deduction of the amount. Considering his submission, I am considering Rs.11,000/- as monthly income of the claimant.

To prove the disability the claimant has examined Dr. Shriram Joshi and Dr. T. Shridhar they have stated that due to accidental injuries the claimant has suffered more than 80% disability. The Tribunal has considered disability at 60%. Due to accidental injuries right leg of the claimant has been amputated, though the claimant has suffered 80% disability, the claimant has stated that his functional disability is 100% as he unable to do any work without any support, he has lost his job, due to disability. Moreover, the claimant has suffered injuries to other parts of his body i.e. uretheral injury, rectal injury, central fracture dislocation (Left) hip, Multiple fracture of pelvis, acetabulam (left) and (right), pubic symphisis separation, Fracture iliac wing (Lt), Crushing of (Rt) lower limb where it has become a mangled mass of flesh nonviable & non-salvageable amputation (disarticulation) at the (Rt) hip joint. Pubic symphysis had plate fixation and (rt) acetabulation and single screw fixation along with amputation. Considering these injuries it appears that the claimant has suffered 100% functional disability. Hence, I am considering 100% functional disability.

The Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 ACJ 2700 (SC),*** the claimant is entitled for 50% future prospectus. The Tribunal has not awarded amount for future medial expenses as the claimant requires three diapers everyday, he is on medication, hence, I am considering Rs.8,00,000/- for future medical expenses. The claimant’s right leg is amputated from joint hip hence, I am considering Rs.15,00,000/- for prosthetic leg. The claimant requires attendant for 24 hours, hence I am considering Rs.7,00,000/- for attendance charges for life long as the claimant has to hire one person as attendant. The Tribunal has awarded Rs.75,000/- for special diet and conveyance. It has come on record that claimant was admitted in various hospitals for taking treatment and he was admitted in the hospital for couple of months. He is required to take special diet in future also hence, I am considering Rs.5,00,000/- for special diet and for conveyance. The Tribunal has awarded Rs.1,50,000/- for loss of amenities and discomforts, I am considering additional Rs.1,00,000/-.

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

Particulars	Rs.	Entitlement
Medical Expenses	Rs.	11,00,000.00
Loss of Income (disability 100%)	Rs.	31,68,000.00
Future medical expenses	Rs.	8,00,000.00
Prosthetic cost+ undue maintenance	Rs.	15,00,000.00
Attendant charge (Rs.5,000 per month)	Rs.	7,00,000.00
Pain and suffering	Rs.	6,00,000.00
Special Diet	Rs.	2,00,000.00
Loss of conveyance	Rs.	3,00,000.00
Loss of amenities & discomforts	Rs.	2,50,000.00
Total	Rs.	**86,18,000.00**
Less compensation awarded by the Tribunal	Rs.	31,80,000.00
Total Balance	Rs.	**54,38,000.00**

The claimant is entitled for an enhanced amount of Rs.54,38,000/- along with interest @7.5% per annum.

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

O R D E R

i. First Appeal No. 1579 of 2011 is dismissed.

ii. Cross Appeal No. 61 of 2011 is allowed.

iii. The claimant is entitled for enhanced compensation of Rs.54,38,000/- @ 7.5 % interest per annum from date of filing of claim petition till realisation of amount.

iv. Appellant/Insurance Company shall deposit enhanced amount along with interest within 12 weeks after receipt of the order.

v. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

vi. The claimant shall pay deficit court fees on enhanced amount as per rule.

vii. Statutory amount in F.A. No. 1579 of 2011 along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rule.

viii. All pending Civil / Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)