

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1795 OF 2013

Sanjay Dattatray Angaj	}	
Age-34 years, Occ : Nil	}	(Org.
R/o. Chimgaon, Taluka-Kagal, District-	}	Claimant)
Kolhapur.	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. The New India Assurance Company	}	
Divisional Office, Near Vateshwar Mandir,	}	
Station Road, Kolhapur	}	
2. Vilas Raghunath Salokhe	}	
Age-Major, Occ : Business	}	(Org.
R/o. Vadange, Taluka-Karveer,	}	Opponents)
District-Kolhapur	}	...Respondents

Mr.Bhushan Walimbe a/w Mr.Parth Modak, for the Appellant.
Ms.Poonam Mital, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 7th MARCH 2024

ORAL JUDGMENT :-

1. By way of this Appeal, the Claimant is seeking enhancement of the compensation.

2. It is contention of the learned counsel for the

Appellant-Claimant that, due to accidental injuries the Claimant has suffered 60% permanent physical disability. His right hand is completely paralyzed and he is unable to do any work. The Tribunal has considered disability at 20%, which is erroneous. The learned counsel further submitted that the Claimant was running electrical shop and doing agricultural work. He was earning Rs.7,000/- per month, but Tribunal has considered Rs.3,000/- per month, which is on lower side. The learned counsel further submitted that, the Tribunal has awarded compensation under non-pecuniary heads on lower side, it be awarded. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that no evidence was produced on record to prove the disability of the Claimant. The learned counsel further submitted that no documents produced on record to show that deceased was running electrical shop and he was doing agricultural work and he was earning Rs.7,000/- per month. The income considered by the Tribunal is proper. The Tribunal has considered all the aspects while passing judgment

and order. No interference is required in it.

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

5. It is Claimant's case that, due to accidental injuries he has suffered 60% permanent physical disability and his right hand is paralyzed. To prove disability the Claimant has examined PW-2 Dr. Bharat Kotkar at Exh-51. He has stated that the Claimant had come to his hospital on 12th August 2007 at 9.00 p.m. with the history of motor vehicle accident. He had sustained injuries to his right forearm and head, his right upper limb was paralyzed, due to injuries sustained in the accident. The Claimant was not cured completely during treatment in the hospital. The Claimant was to referred to the Neuro Surgeon and he has issued certificate of permanent disability to the extent of 60%. The certificate is at Exhibit-58. The Claimant cannot use his right hand from shoulder to wrist unless major surgery is performed. This witness further stated that the Claimant will not able to do work by his right hand including the routine activity of brushing, eating etc.

In cross-examination he admitted that he had given primary treatment to the Claimant when he was admitted in the hospital. On the next date of admission the Claimant was referred to Neurosurgeon. In support of his case the Claimant has examined Dr. Sonali Joshi, PW-3 at Exhibit-65. She has stated that she is Neuro Surgeon. The Claimant was admitted in their hospital on 13th August 2007. She further stated that the Claimant had injury to his brain and there was no movement of his right hand. Nothing elicited in the cross-examination of this witness.

6. While dealing with the issue of disability the Tribunal has observed that Dr. Kotkar has given disability in respect of particular limb and it can be considered disability of whole body on that count the Tribunal has considered the disability at 20%. I am unable to understand the observations of the Tribunal as from the evidence of PW-2 and 3, who are expert witnesses. It has come on record that right hand of the Claimant was paralyzed. Though the doctor has given 60% limb disability but it is 100% functional disability. It has come in the evidence of the Claimant due to disability he is unable to do agricultural work and he is

unable to run his electric shop, but this fact is not considered by the Tribunal. Hence, I am considering 100% disability of the Claimant. It has come in the evidence of Claimant that he was running electrical shop and agricultural work but no evidence was produced on record. At the time of the accident the Claimant was 30 years old. Considering evidence on record, I am considering Rs.5,000/- as monthly income of the Claimant. The Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi¹***, the Claimant's are entitled for future prospects. The Tribunal has awarded compensation of Rs.5,000/- for pain and suffering I am considering Rs.50,000/-. The Tribunal has not awarded compensation for special diet, I am considering it Rs.15,000/-. The Tribunal has not awarded compensation of convenience, I am considering it Rs.10,000/-. The Tribunal has not awarded amount for expectation in life, I am considering it Rs.10,000/-, for disfigurement of Rs.50,000/- and for loss of amenities in life Rs.50,000/-. Considering the

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above calculations, the Claimant is entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.5,000.00
Annual Income (Notional Income X 12 months)	Rs.60,000.00
(+) Future Prospects (40%) of Annual Income = Rs.24,000/-	Rs.84,000.00
Thus Total Income Rs.60,000 + Rs.24,000/-	
Loss of Income Rs.84,000 X 17	Rs.14,28,000.00
Pain & Suffering	(+) Rs.50,000.00
Loss of Amenities	Rs.50,000.00
Loss due to disability & Disfigurement	Rs.50,000.00
Special Diet	Rs.15,000.00
Transport & Conveyance	Rs.10,000.00
Loss in expectancy of Life	Rs.10,000.00
Total Enhanced Compensation	Rs.16,13,000.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant is entitled for enhanced amount of Rs.16,13,000/- @ 7.5% along with accrued interest thereon.

- (iii) The Respondent-Insurance Company shall deposit enhanced amount within six weeks after receipt of the order.
- (iv) The Claimant's are permitted to withdraw deposited amount along with accrued interest.
- (v) The Claimant's shall pay Deficit Court Fees on enhanced amount.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)