IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 91 OF 2004

Vilas Laxman Kapare Age-29 years, Occ: Service, R/at Bhambhavade, Taluka-Bhor, District-Pune.	} } } }	 **...Appellant**

Versus

1. Hirabhai Motibhai Aal Adult, Occ : Business R/at C/o. B.Khatna, Khodiyarpara, BHST, Workshop, Rajkot (Gujrat)	} } } }	
2. The Oriental Insurance Co. Ltd. Regional Office, Progress House, Bombay Poona Road, Shivaji Nagar, Pune0411 005.	} } }	(Org. Opponents) **...Respondents**

Mr.Yogesh Pande, for the Appellant.
Mr.Devendranath S. Joshi, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

. By way of this appeal, the Appellant-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 50% permanent physical disability. His right leg is shortened. The Claimant was driver. Due to accidental injuries he has lost his job. The learned counsel further submitted that the accident occurred due to sole negligence of the driver of the offending vehicle. The Tribunal has observed that in sister Claim Petition it is held that the driver was involved in the accident. As well as the Claimant has not joined the owner or insurer of the tempo as necessary party and as such the Claimant will have to pay 20% of the compensation amount, which is erroneous. The learned counsel further submitted that the Tribunal has awarded compensation on lower side under other heads, it be awarded. The learned counsel further submitted that the Tribunal has not awarded future prospects and multiplier has not been applied while calculating compensation.

3. It is contention of the learned counsel for the Respondent-Insurance Company that while awarding compensation, the Tribunal has considered all the aspects and on that basis judgment and order is passed. No interference is

required in it. The learned counsel further submitted that, the Tribunal has rightly considered 20% contributory negligence of the Claimant.

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

5. Admittedly, due to accidental injuries, the Claimant has suffered 50% permanent physical disability and his right leg is shortened by 2 and ½ inch. It has come in the evidence of the doctor that in future, the Claimant will not be able to drive the vehicle. The Claimant was driver so, considering disability of the Claimant and evidence of doctor, the Claimant has suffered 100% functional disability, but this fact is not considered by the Tribunal. The Tribunal has considered monthly income of the Claimant at Rs.3,000/- per month, but while awarding compensation, the Tribunal has not applied multiplier and future prospects has not been awarded. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay***

***Sethi*[1],** the Claimant is entitled for future prospects. The Tribunal has considered Rs.20,000/- for pain and suffering. In my view, the Claimant right leg is shortened by 2 and ½ inch. At the time of the accident he was 26 years old and he has to suffer disability for his entire life. Hence, I am considering Rs.1 lakh for pain and suffering and he was admitted in hospital for multiple times. It has come in the evidence of the doctor that the Claimant is required future medical expenses, hence, I am considering Rs.1 lakh for future medical expenses. The Tribunal has awarded Rs.50,000/- for conveyance and special diet it is proper. The Tribunal has not awarded compensation for loss of amenities in life, I am considering it Rs.1 lakh. The Tribunal has not awarded amount for loss of expectation in life, I am considering it Rs.50,000/-. While awarding compensation the Tribunal has considered 20% contributory negligence of the Claimant, on the ground that, in sister Claim Petition the Tribunal has considered contributory negligence of both the drivers, as well as the Claimant had not joined owner or insurer of

1 *2017 ACJ 2700 (SC)*

the tempo as necessary party. I am unable to understand the observations of the Tribunal as FIR was lodged against the driver of the offending vehicle. The Claimant has examined himself to prove the evidence, police paper shows the negligence of the driver of offending vehicle. Moreover, the driver of the offending vehicle did not step into witness box to prove 20% contributory negligence of the Claimant. The observation of the Tribunal is erroneous. Hence, I am setting aside it.

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

Particulars	**Amount**
Loss of Earnings Rs.3000/- Salary X 12 months x 17 multiplier	Rs.6,12,000.00
Add: Future Loss of earning 50%	Rs.3,06,000.00

	Rs.9,18,000.00
Add : Medical Bill	Rs.1,11,500.00
Pain & Suffering	Rs.1,00,000.00
Future Medical Expenses	Rs.1,00,000.00
Conveyance & Diet	Rs.50,000.00
Loss of Amenities	Rs.1,00,000.00
Loss of Expectation of Life	Rs.50,000.00

	Rs.14,29,500.00
Less awarded by Tribunal	Rs.1,85,200.00

	Rs.12,44,300.00
	============

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

<u>ORDER</u>

(i) The Appeal is allowed.

(ii) The Claimant is entitled for enhanced amount of Rs.12,44,300/- @ 7.5% interest per annum from the date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.1 lakh is for future medical expenses, the Claimant is not entitled for interest on this amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with interest within six weeks from the receipt of the order.

(iv) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.

(v) The Claimant shall pay Deficit Court Fees on enhanced amount, as per Rules.

(vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)