

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 76 OF 2004

Dr. Milind Shrikrishna Vaidya)
Age: 29 years, Occu: Medical Practitioner,)
R/o. C/o. Shri. B. K. Marathe,)
7 & 8 Natwar Villa, Near Ambaji Temple,)
Tal. : Palghar, Dist: Thane.)Appellant

Versus

1. Shri. Suhas Ramchandra Vidya)
Age: Adult, Occu: Business,)
Vithal Saiyana Shiva Dutta Mandir,)
Manpada, Agra Old, Thane.)
2. New India Assurance Company Ltd.)
New India Bhavan, Bombay Samachar Marg,)
Fort, Bombay 0 400 023.)Respondent

Mr. Sameer Kumbhakoni for the Appellant.
Ms. Poonam Mittal for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th FEBRUARY, 2024.

Oral Judgment. :

1. By this appeal, Appellant/Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant that while awarding the compensation, the tribunal has awarded interest on compensation from date of judgment i.e. from 3rd March, 1998. The claim petition was filed on 1st June, 1993, the interest should have been awarded from the filing of claim petition. Learned counsel further submitted that the tribunal has considered contributory negligence of 50% of the rider of the motorcycle on which the Appellant was riding and 50% on the driver of unknown vehicle who dashed the motorcycle, due to accidental injuries Appellant has suffered permanent physical disability. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that after filing the claim petition. The Appellant did not take steps due to which the claim petition was prolonged. Hence, the tribunal has not awarded the interest on compensation amount from the date of filing of claim petition, which is proper. Learned counsel further submitted that the motorcycle of deceased was dashed by unknown vehicle hence, the 50% contributory negligence of Appellant and 50% of unknown vehicle

considered by the tribunal is proper. No interference is required in it.

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

5. While awarding interest, the tribunal has observed that after filing the claim petition. It was prolonged due to not taking steps by the Appellant. Hence, tribunal has awarded the interest from the date of judgment i.e. year 1998, whereas the claim petition was filed in year 1993. In my view, it is settled principle of law that claimant is entitled for interest on compensation amount from the date of filing claim petition. Hence, Appellant is entitled for interest on compensation amount from the date of filing claim petition.

6. In respect of the issue to contributory negligence. It is claimant’s case that he was pillion rider on the motorcycle, when unknown vehicle dashed to his motorcycle and ran away. While dealing with this issue the tribunal has held 50% contributory negligence of the Appellant and 50% contributory negligence of the

unknown vehicle. I am unable to understand the finding of the tribunal. As, it is claimant's case that the deceased was riding the motorcycle in moderate speed and he was observing the traffic rules and the unknown vehicle came from opposite direction and dashed to the motorcycle of the deceased on which Appellant was pillion rider, when the Appellant was pillion rider issue of his contributory negligence would not arise. Moreover, as per the terms and conditions of insurance policy premium for pillion rider was paid. The tribunal has deducted amount of Rs.1,66,500/- from the total compensation amount for which Appellant is entitled for 50% contributory negligence. I am setting aside the observations of the tribunal regarding 50% deduction of the amount.

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

ORDER

- i. The Appeal is allowed.
- ii. The Claimant/Appellant is entitled for amount of Rs. 1,66,500/- @ of interest 7.5% per annum from the date of filing claim petition till realization of amount.

- iii. The Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
8. Learned counsel for the Respondent No.2 undertakes to file Vakalatnama.
9. All pending interim applications are disposed off.

(SHIVKUMAR DIGE, J.)