IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1577 OF 2009

	Bali Bhagwanta Mane, Age 40 years, Occ. Agriculturist, Residing at Kushire, Tal. Panhala, District : Kolhapur.	….	Appellant (Orig. Petitioner)
	Versus		
1	Shivaji Dadu Chile, Age 30 years, residing at Paijarwadi, Tal. Panhala, District : Kolhapur.		
2	The New India Insurance Co. Ltd., 334, E Ward, Trade Centre, Station Road, Kolhapur.	….	Respondents (Orig.Opponents)

Mr. P. D. Dalvi, Advocate for the Appellant.
Mr. Sandeep S. Jinsiwale, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. By way of this appeal, the appellant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that due to accidental injuries the claimant has suffered 20% permanent physical disability and his functional disability is 50%. The claimant is agriculturist, he does labour work but the Tribunal has awarded compensation on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that while passing the judgment and order, the Tribunal has considered all the aspects, no interference is required in it.

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

5. It is claimant's case that the claimant was labourer and he cultivates his agricultural land. The Tribunal has considered monthly income of the claimant at Rs.1800/-, the said income is not challenged by the Insurance Company. Due to accidental injuries, the claimant has suffered fracture to his left shoulder and right leg and operation is performed on his leg and shoulder and rods were inserted in it. The doctor has given 20% permanent physical disability. The claimant, in his evidence, has stated that after the accident, due to permanent physical disability, he is unable to do any work. As claimant was doing agricultural and labour work but due to accidental injuries, he is unable to do any work, hence, the Tribunal should have considered his functional disability at 50%.

The Tribunal has not awarded compensation for loss of future earnings. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC) ,*** the claimants are entitled for 15% future prospects. The Tribunal has awarded Rs.5,000/- for physical agony, I am considering it at Rs.10,000/-.

The Tribunal has awarded Rs.1200/- for travelling, I am considering it at Rs.3000/- as claimant was admitted in hospital for 26 days. The Tribunal has awarded Rs.2500/- for special diet, I am considering it at Rs.5000/-. The Tribunal has considered 10% contributory negligence of the claimant, I am not interfering in it.

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

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.1800/- pm x 12)	Rs.	21600.00
15% future prospects	Rs.	3240.00
Total	Rs.	24840.00
50% functional disability	Rs.	12420.00
Total :	Rs.	12420.00
Rs.12420/- x 15 (multiplier)	Rs.	186300.00
Medical Expenses	Rs.	69341.00
Pain and Suffering	Rs.	10000.00
Travelling Expenses	Rs.	3000.00
Special Diet	Rs.	5000.00
Total Compensation.	**Rs.**	**273641.00**
Less 10% Contributory Negligence	Rs.	27364.00
Total	**Rs.**	**246277.00**
Less Compensation granted by Tribunal	Rs.	165186.00
Total	**Rs.**	**81091.00**

The Tribunal has awarded Rs.1,65,186/- if this amount is deducted from the amount of Rs. 2,46,277/- considered by this Court, it comes to Rs.81091/-. The claimant is entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The claimant is entitled for enhanced compensation of Rs.81,091/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)