

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

FIRST APPEAL NO. 633 OF 2012

Shri. Ravindra Anand Dethe,)
 Age about 27 years, occupation)
 Student, residing at 308, Sai Palace,)
 3rd floor, Shahad Gaothan, Opp.)
 Century Rayon Hospital, Ulhasnagar)
 01, District Thane.)Appellant

Versus

1. Shri Gafur Gulab Shaikh)
 Residing at Anil Dhangar Chawl,)
 Shivaji Road, Mahatma Phule)
 Chowk, Shahad, Ulhasnagar 01,)
 Dist. Thane (Owner of Tata Sumo)
 No. MH005-G-1012).) Orig. Opp. No.1

2. New India Assurance Co. Ltd.,)
 Though its Divisional Manager,)
 having their office, at Kalyan)
 Divisional Office, Guru)
 Govind Nivas, Murbad Road,)
 Kalyan West, District. Thane)
 (Insurer of Tata Sumo No.)
 MH-05-G-1012) Policy No.)
 141800/31/04/25604. Policy Period)
 from: 9.2.2005 to 8.2.2006.) Orig. Insurer
Respondent

Ms. Rina Kundu, Advocate for the Appellant.
 Ms. Kalpana Trivedi, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th JANUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is compensation awarded on lower side.

2. It is contention of learned counsel for the Appellant/Claimant that due to accidental injuries, the Claimant has suffered 50% permanent physical disability. There was injury to the spinal cord of the Claimant, the doctor was examined to prove the disability of the Claimant and he has stated that the Claimant has suffered 50% permanent partial disability but, the Tribunal has awarded lum sum amount of Rs.51,000/-, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for Respondent/Insurance Company that while dealing with the issue of disability, the Tribunal has observed that the doctor who has issued the disability certificate has not treated the Claimant. The disability is exaggerated, no medical papers produced on record in support of

treatment taken by the Claimant and on that ground the Tribunal has awarded Rs.51,000/-, which is proper and no interference is required in it.

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

5. It is Claimant’s case that due to accidental injuries, he has suffered 50% disability. To prove his case the Claimant examined himself at Exhibit-26, he has stated that due to accidental injuries, he has suffered 50% disability and after the accident, he is unable to do his routine work and was bed ridden for 18 months. There was no blood circulation in lower limb. He had urine problem for the period of 8 to 9 months. He cannot attend his college due to the injuries. In cross-examination, he has stated that he was admitted in the hospital for about 15 days. To prove the disability the Claimant examined Dr. Sujit Jain, he has issued 50% physical disability certificate to the Claimant. He has stated that the Claimant has suffered injuries to his, Wedge compression, D-12 fracture, Bilateral foot drop. His complaints were, he was unable to walk without support, there was weakness in both lower limb, swelling of both legs, decreased sensation of both

legs, loss of control of both lower limb. After examining the Claimant this witness has issued 50% permanent disability certificate. This witness has advised to the Claimant that he cannot travel alone in bus or train, he cannot do heavy work. This witness further stated that, the Claimant would not get improvement in future as already 6 years have been passed. In cross-examination this witness admitted that he has verified medical papers from Chatrapati Shivaji Maharaj Hospital Kalwa. Where Claimant had taken treatment after the accident. This witness admitted that Claimant had come to him for assessing disability, he has not taken x-ray of the Claimant, he has examined clinically and gone through his previous papers. He has admitted that he has not seen medical papers of other doctor i.e. Abhay Kulkarni and Dr. Dilip Ranawade. This witness has stated that Claimant cannot do work, which required travelling, walking but he can do sitting work near to his house. The Claimant can walk with the help of walker support. This witness denied suggestion that he has given excessive disability certificate.

6. Considering the evidence of doctor and evidence produced on record, the Tribunal has observed that there is nothing on record to show that rod inserted in the fracture injury is to be removed and

the Claimant would require expenses of Rs.50,000/- for future medical treatment. Though, doctor has given 50% permanent partial disability, however, other medical evidence on record wherein the Claimant has incurred expenses of Rs.6,000/- towards the medical treatment and medicine clearly shows that there is exaggeration of percentage of the disability. The exact age of the Claimant is also not brought on record. Dr. Sujit Jain has not given any medical treatment to the applicant and he issued permanent disability certificate on the basis of medical papers issued by treated hospital. Considering these facts the Tribunal has awarded lum sum amount of Rs.51,000/- as a compensation. I am unable to understand the observations of the Tribunal. In my view, the Tribunal has passed the order mechanically without applying of his mind and without going through evidence produced on record. Admittedly, after the accident the Claimant was admitted in Chatrapati Shivaji Maharaj Hospital, Kalwa, Thane Municipal Corporation. These documents shows the age of Claimant as 20 and in this document it is mentioned, the treatment given during hospital stay in which it is mentioned D-12 vertebrae wedge compression, 2. posterior approach Harrington rod distraction done by Dr. Kulkarni. General Anesthesia given by Dr. Patil. These

documents shows there was injury to the vertebra of the Claimant. The MRI report is produced on record, it shows that there was injury to D-12 vertebra. It has come in the evidence of Dr. Sujit Jain that the Claimant cannot walk alone, he needs support and his injuries would not be cured. The Dr. Sujit Jain has given the disability certificate after examining the Claimant and on the basis of medical papers but, this facts are not considered by the Tribunal. Hence, I am considering 50% permanent physical disability of the Claimant. At the time of accident the Claimant was 11th standard student. Hence, I am considering his notional monthly income at Rs.4,000/- per month. He is entitled for compensation under the head of pain and suffering, loss of amenities in life and conveyance, special diet.

7. Considering above calculation, the Claimants are entitled for following compensation.

Monthly income	Rs.4,000/-
Loss of income due to disability Rs.4,000/- X 50%	Rs.2,000/-
Total monthly income	Rs.2000/-
Annual Income (Rs.2000/- X 12)	Rs.24,000/-
Multiplier 18 (Rs.24,000/- X 12)	Rs.4,32,000/-
Pain and suffering	Rs.1,00,000/-
Loss of amenities	Rs.1,00,000/-
Special diet	Rs.50,000/-
Conveyance	Rs.50,000/-
Total compensation	Rs.7,32,000/-

Less awarded by the Tribunal	Rs.51,000/-
Enhanced amount	Rs.6,81,000/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimant is entitled for enhanced amount of Rs.6,81,000 @ 7.5% interest per annum from date of filing claim petition till realisation of the amount.
- iii. The Respondent No.2/Insurance Company shall deposit the 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.

9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)