

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

FIRST APPEAL NO. 1292 OF 2005

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Mr. Chanbasappa Laxman Tellungi)
Age: 45 years,)
R/at: Bori Umerga, Tal: Akkalkot.)
Dist: Solapu (Since Deceased) Thr. Lrs.)

1 a. Siddharam Channappa Tellunagi)
Age: 26 years, Occ: Agriculturist)
R/at: Near Laxmi Temple at Post)
Umerga, Tal: Akkalkot)
Dist: Solapur – 413216.)

1b. Rupali Vijaykumar Mirkal)
(Married daughter of deceased))
Age: 33 years, Occ: Housewife,)
R/at: Kumbhar Galli, Dudhani Village)
District: Solapur – 413220)....Appellant
(Orig. Claimant)

Versus

Divisional Controller, Maharashtra State)
Road Transport Corporation.)
Shankar Seth Road, Swargate, Pune.)....Respondent
(Original Opponent)

Ms. Ketki Gokhale i/b Mr. A. M. Gokhale, Advocate for the Appellant.
Ms. Pinky M. Bhansali, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st MARCH, 2024.

Oral Judgment. :

1. By way of this appeal, the claimants are seeking enhancement of the compensation.

2. It is contention of learned counsel for the Appellant that due to the accidental injuries, the claimant has suffered 30% physical permanent disability to his leg and leg is shortened. Due to shortening of his leg, his driving licence is cancelled so, he is unable to do any work but, the Tribunal has not considered this fact and has awarded compensation on lower side. Learned counsel further submitted that the Tribunal has not awarded compensation under non pecuniary heads. The Tribunal has not awarded future prospects. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the

Respondent/Corporation that the Claimant has suffered 30% permanent physical disability, it cannot be considered as 100% functional disability. After eight years of the accident, the driving licence was wrongly cancelled due to disability of the Claimant. The Tribunal has considered all the aspects while passing the order. Hence, requested to dismiss the appeal.

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

5. It is Claimant’s case that due to accidental injuries, he has suffered 40% permanent disablement and to prove the disability the Claimant has examined PW-2 Arvind Bhave, he has stated that the Claimant had fractured of tibia fibula, middle third of right leg, Grade-2 B. The Claimant has suffered 40% permanent partial disability of whole body. He was a heavy vehicle driver. After the accident, he is total unfit in driving heavy vehicle because his knee and the ankle movement are restricted around 50%. His right leg is shortened. The disability certificate is at Exhibit 31. In cross

examination, this witness admitted that the Claimant did not come in his hospital for any treatment before issuing the disability certificate. This witness has further admitted that he had calculated shortening of leg by taking its measurement. To prove the 100% functional disability, the claimant has examined PW-3 Santosh Survase, Junior Clerk in R.T.O. Office Solapur. He has stated that the driving licence was issued to the Claimant on 24th September, 1986 and it was for heavy vehicle and it was renewed up to 27th November, 1998. Thereafter his driving licence is not renewed. The said licence is cancelled on 11th October, 2004 on the basis of medical certificate of Dr. Sanjay Khairnar. The certificate of cancellation is at Exhibit-45. In cross-examination this witness admitted that the driving licence is cancelled on the basis of application along with medical certificate.

6. Considering the evidence on record, the Tribunal has considered 35% disability and has awarded lumpsum compensation of Rs.86,500/-. I am unable to understand the observations of the Tribunal as, it has come in the evidence of PW-2 Dr.Arvind Bhave that due to the accidental injuries the Claimant has suffered 40% permanent partial disability and his leg is shortened. The Claimant was a heavy vehicle driver. Due to the shortening of leg, his driving

licence is cancelled. The said fact is proved by the evidence of PW-3 Junior Clerk of R.T.O. Office, Solapur. So. there is 100% function disability but this fact is not considered by the Tribunal. It is claimant's case that he was earning Rs.3700/- per month as, he was driver. Hence, I am considering Rs.3,500/- per month as monthly income of the Claimant. The Tribunal has not awarded amount for loss of earning capacity. At the time of accident, the Claimant was 35 years old hence, proper multiplier is 16. The Claimant is entitled for the future prospects there is 100% functional disability.

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

Monthly income	Rs.3,500/-
Annual Income	Rs.42,000/-
Multiplier 16 (Rs.42,000/- X 16)	Rs.6,72,000/-
Add: 40% future prospects	Rs.2,68,800/-
Add: Future medical expenses	Rs.25,000/-
Add: Medical expenses	Rs.10,000/-
Add: Conveyance	Rs.25,000/-
Add: Special Diet	Rs.25,000/-
Add: Pain and suffering	Rs.50,000/-
Add: Loss of Amenities	Rs.50,000/-
Total compensation	Rs.11,25,800/-
Less awarded by the Tribunal	Rs.86,500/-
Enhanced amount	Rs.10,39,300/-

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

ORDER

- i. Appeal is allowed.
 - ii. The Claimant is entitled for Rs.10,39,300/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 - iii. The Respondent/Corporation shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.
 - iv. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Claimant shall pay deficit Court fees on enhanced amount.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)