

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

FIRST APPEAL NO. 1588 OF 2007

Miss.Shrutika Dayanand Kadam }
Age-6 years, Minor Thr. Her Next friend }
and father Shri.Dayanand Tukaram Kadam, }
R/at Tukaram Parshuram Kadam Bhagwati }
Niwas, Room No.5, Kajupada, Borivali (E), }
Mumbai-400 066. }

...Appellant

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
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Date: 2024.05.10
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Versus

1. M.S.R.T. Corporation }
8, Vahatuk Bhavan, Bellasis Road, Mumbai }
Central, Mumbai-8 }

(Org. Opp.
Party 1)

2. Mrs.Philomeena Jeseoph Piedad }
Uttam Mothagaon, Bhayandar, }
Distr-Thane. }
(owner of Luxury Bus No.MH-04-G-1007) }

(Org. Opp.
Party 2)

Second Address : Rajashri Shahu Nagar, }
Building No.E/7, Room No.1, Ground }
Floor, Mahim (E), Mumbai-400 017 }

3. The New India Assurance Co. Ltd., }
New India Bhavan, 1st Floor, Sahid Bhagat }
Singh Road, Fort, Mumbai-400 023. }

(Org. Insurer)
Luxury Bus
....Respondents

Ms.Ketki Gohale i/b Mr.A.M. Gokhale, for the Appellant.
Mr.P.M. Bhansali, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Claimant is seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant-Claimant that the Claimant has suffered 95% permanent physical disability due to accidental injuries her left hand is amputated, but Tribunal has awarded Rs.2,05,136/- as lump-sum compensation, which is on lower side. The learned counsel further submitted that as per view of the Apex Court in case of *Master Mallikarjun V/s. Divisional Manager, National Insurance Company Limited & Another¹*, the Claimant is entitled for compensation.

3. It is contention of the learned counsel for the Respondent-Corporation that two disability certificates were produced on record, one was of 80% disability and other was 95% permanent physical disability, it creates doubt about

¹ Civi Appeal no.7139 of 2013 (Arising out of SLP (Civil) No.1676 of 2012) dated 26-08-2013

disability of the Claimant. The Tribunal has considered all the aspects while passing judgment and order. Hence requested to dismiss the Appeal.

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

5. It is Claimant's case that due to accidental injuries the Claimant has suffered 95% permanent physical disability. The Claimant has produced two disability certificates on record. One is issued by Sion hospital, it is of 80% and other is issued of 95%, it is issued by Dr.Amit Ajgaonkar. The Claimant has examined Dr.Ajagonkar in suppoort of their case. Dr. Ajagaonkar has stated that due to accidental injuries left hand of the Claimant is amputated and she has suffered other injuries. The Dr.Ajagonkar has issued certificate of 95% disability. At the time of the accident the deceased was 6 years old. Considering the evidence on record the Tribunal has awarded lump-sum compensation of Rs.2,05,136/-. I am unable to understand observations of the Tribunal as Dr.Ajagonkar has given 90% permanent disability

certificate has been examined before the Tribunal. He has stated about difference between disability certificate issued by Sion Hospital and him. He is expert witness. At the time of the accident the Claimant was six years old and her left hand is amputated. Considering these facts, I am considering disability of the Claimant at 95%. As per view of the Hon'ble Apex Court in the case of *Master Mallikarjun (Supra)*, the Claimant is entitled for compensation of Rs.6 lakhs. Considering calculation the Claimants are entitled for following compensation.

Particulars	Amount
Pain and Suffering (9% disability)	Rs.6,00,000.00
Add: Medical Expenses	Rs.15,000.00
Add : Future Medical Expenses	Rs.15,000.00
Add: Conveyance	Rs.25,000.00
Add: Special Diet	Rs.25,000.00
Add : Loss of Marriage Prospects	Rs.1,00,000.00
Total Compensation	Rs.7,80,000.00
Amount awarded by the Tribunal	Rs.2,05,136.00
Difference of amount	Rs.5,74,864.00

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Claimant is entitled for enhanced amount Rs.5,74,864/- @ 7.5% per annum from date of the filing of the Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 6 weeks after receipt of this order.
- (iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.
- (v) The Claimant shall pay Deficit Court Fees on enhanced amount.
- (vi) All pending Civil and Interim Applications are disposed of.

7. The learned counsel for the Respondent requested for stay of the order as accident is of the year 2010, I am not inclined to grant stay to the order.

(SHIVKUMAR DIGE, J.)