

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1000 OF 2022**

	United India Insurance Company Limited. 14, Shribag, Near S. T. Stand, Alibag, District Raigad (Insurer of offending vehicle No.MH-43-H-231) Policy No. 121001/31/08/01/00004170 Period 27.6.2008 to 26.6.2009 Having its regional office at MRO II TP HUB, Union Co-op. Insurance Building, 5 th Floor, Sir. P. M. Road, Fort, Mumbai – 400 023.	...	Appellant
	Versus		
1	Girsih Vasant Sathe, Aged 40 years, Occupation : Nil, R/at Room No.4, Ground Floor, Om Narmada CHS Dave Wadi, Ahilyadevi Chowk, Kalyan, District Thane.		
2	Caprkorn Transways Pvt. Ltd. Through owner Shri Bevin Anthony Costlino, Aged Adult, occu: Business (owner of vehicle No.MH-43-H-231) Capricorn Transways Pvt. Ltd., R/at Anjali Plazza, Plot No.62, MCCHH Soc., Panvel, District Raigad.		Respondents

Ms. Varsha Chavan, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. The issues involved in this appeal are income of the deceased

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is considered on higher side and multiplier should not have been applied while calculating compensation.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of the claimant at Rs.9000/- per month without any evidence on record. The Tribunal has awarded future prospects on it, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that due to accidental injuries, the claimant has suffered 48% permanent physical disability. After the accident, the claimant is unable to do any work, he is the Karta of his family. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

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

5. To prove the income, the claimant has examined himself. He has stated that he was working as site supervisor at Shri Gajanan Constructions Company and he was getting salary of Rs.9,000/- per month. He has produced salary certificate on record.

5.1. While dealing with the issue of income of the claimant, the Tribunal has observed that the income of the claimant has not been challenged during his cross-examination. The Tribunal has observed that

the claimant was working as site supervisor, no doubt, the claimant has not placed on record the proof of his salary, but taking into consideration the nature of his work, the claimant must have been earning Rs.9000/- per month. In my view, it is on little higher side as the claimant was working as site supervisor in construction company and the date of the accident is 13th April 2009, I am considering monthly income of the claimant at Rs.8000/- per month.

5.2. Due to accidental injuries, the claimant has suffered 48% permanent physical disability. After the accident, he is unable to do any work and, at the time of the accident, he was 41 year old. 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 claimant is entitled for 25% future prospects and the Tribunal has awarded it.

5.3. As per monthly income of Rs.8000/-, the excess compensation amount comes to Rs.1,05,000/-. The appellant-Insurance Company is entitled to it.

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

ORDER

1. The appeal is partly allowed.
2. The appellant/Insurance Company is permitted to withdraw Rs.1,05,000/- along with proportionate interest thereon, out of the deposited amount.

3. Respondent No.1/claimant is permitted to withdraw the balance amount along with proportionate interest thereon.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
The first appeal stands disposed of.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)