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

FIRST APPEAL NO. 330 OF 2021

Amar Ravindra Ghewari)
Age: 34 years, Occu: Nil)
R/o Plot No. 58, Govt. Colony,)
Vishrambag, Sangli)....Appellant
(Org. Claimant)

Versus

1. Uttam Ashok Salokhe)
Age: 40, Occ: Business)
R/o. 230 / BNR Grampanchayat Galli,)
Girgaon, Taluka-Karvir,)
District – Kolhapur,)

2. The Manager)
United India Insurance Co. Ltd,)
Plot No. 23, T.P.C. No.1, Aarsiddha Building,)
Near Shahu Mill, Bagal Chowk,)
Kolhapur.)....Respondents
(Org. Opponents)

Mr. Rahul Patil, Advocate for the Appellant.
Mr. Rahul Mehta i/b KMC Legal Venture, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th FEBRUARY, 2024.

<u>Oral Judgment :</u>

1. By way of this appeal, Appellant/Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant/Claimant that the Claimant has suffered 77% physical permanent disability due to accidental injuries but Tribunal has awarded compensation on lower side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that while passing order, the Tribunal has considered all the aspects and on that basis, the judgment and order is passed 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, Sangli (for short

"the Tribunal").

5. While dealing with the issue of disability the Tribunal has considered notional disability of the Claimant at 25%. In my view, it is erroneous. As PW-2 Dr. Vikrant Mugdam has stated that the Claimant was admitted in his hospital on 5th December, 2015 till 24th December, 2015. On 9th December, 2015 the surgery of elastic nail surgery for the reunion of forearm, bone was carried out and thereafter on 3rd March, 2016 the replacement surgery of left hip was carried out. After examining the Claimant, he has issued disability certificate of 77%. In my view, PW-2 is expert witness, who had treated the Claimant and issued disability certificate after examination of the Claimant hence, I am considering the disability of the Claimant as 77%. The tribunal has considered annual income of the Claimant at Rs.2,03,250/- but the tribunal has not awarded future prospects and loss of income. Though, the Claimant has suffered 77% disability, his functional disability is 100%. The tribunal has awarded medical expenses at Rs.2,60,934/-. The evidence produced on record shows that medical expenses was Rs.3,41,196/- hence, I am considering this amount. The Tribunal has not considered loss of income. Due to the

accidental injuries, the Claimant was admitted in hospital and he was taking the follow up treatment hence, I am considering loss of income of 6 months i.e. of Rs.1,01,625/-. The tribunal has not awarded amount for loss of amenities hence, I am considering it Rs.50,000/-. At the time of accident Claimant was 28 years old. The tribunal has not awarded compensation for expectations of his life hence, I am considering it Rs.1,50,000/-. Tribunal has not awarded amount for special diet and conveyance hence, I am considering at Rs.50,000/-.

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

Annual Income	Rs.2,03,250/-
Loss of earning capacity	Rs.1,56,502/-
Multiplier 17 (Rs.1,56,502/- X 17)	Rs.26,60,542/-
Expenditure incurred in hospital	Rs.3,41,196/-
Loss of income during bed ridden	Rs.1,01,625/-
Loss of amenities	Rs.50,000/-
Marriage prospects	Rs.1,50,000/-
Special diet and conveyance	Rs.50,000/-
Total compensation	Rs.33,53,363/-
Less awarded by the tribunal	Rs.9,95,816/-
Enhanced amount	**Rs.23,57,547/-**

9. In views of above, I pass following order.

ORDER

i. Appeal is allowed.

ii.The Claimant is entitled for enhanced amount of **Rs.23,57,547/-** @ 7.5% per annum from the date of filing claim petition, till realization of the amount.

iii. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the deposite amount along with accrued interest thereon.

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

(SHIVKUMAR DIGE, J.)