

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1346 OF 2013

Mohammad Sabir Mohammad Sakir Shaikh

Age : 35 years, Occ : Nil,
R/at, Bopele, Post. Neral,
Tal. Karjat, Dist. Raigad

... Appellant

Versus

1. Virendra Angad Yadav

R/at. 17, Keshav Dham.
Boisar Road, Palghar, Dist. Thane.

2. The New India Assurance Co. Ltd.

Nirkunj Signature, 3rd Floor,
Above Corporation Bank, Manav Mandir Road,
Vasai, Tal. Vasai, Dist. Thane.

... Respondents

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- Mr. S. R. Chavanke, Advocate for the Appellant.
- Ms. Poonam Mital, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

JUDGMENT :

1. By way of this appeal appellant is seeking enhancement of compensation.

2. It is the contention of learned counsel for the appellant that due to accidental injuries right hand of the appellant is amputated. The appellant was working as a cleaner and he was getting Rs.6,000/- per month as a salary but the Tribunal has considered notional income of appellant of Rs.3,000/- per month which is on lower side and on that basis compensation is awarded. Learned counsel further submitted that though

the right hand of the appellant is amputated the Tribunal has considered permanent physical disability at 40%. Due to amputation the right hand of the appellant he is unable to do any work. The functional disability is 100%, hence requested to allow the appeal.

3. It is the 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 order is passed. Learned counsel further submitted that in cross examination the doctor who has issued disability certificate has stated that he has not produced any record on which basis he assessed the disability of the appellant. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Palghar (for short "**the Tribunal**"). It is claimant's case that he was working as a cleaner on the truck bearing No.GJ-15/UU-1048 and he was getting salary of Rs.6,000/- per month. To prove the income, the appellant/claimant examined employer Mohammad Kashid, he has stated that he was paying Rs.6,000/- per month as a salary to the appellant. While dealing with this issue, the Tribunal has observed that there is no document produced, no record about the payment of salary by the employer nor income tax returns in respect of the said salary was filed. On that basis the Tribunal

has considered notional income of the appellant at Rs.3,000/- per month. I am unable to understand the observation of the Tribunal, as the Tribunal has failed to consider that appellant was working as a cleaner on the truck so no question of maintaining his salary Register arises. Moreover, no income tax returns of such amount can be filed. As appellant was working as a cleaner and there is evidence of the employer in respect of his salary, I am considering monthly income of appellant at Rs.4,000/- per month. There is amputation of right hand of the appellant and after the accident appellant is unable to do any work though doctor has given 48% disability it is 100% functional disability. Hence, I am considering functional disability of appellant as 100%. The Tribunal has awarded compensation under other heads on lower side. Considering nature of disability, I am increasing it.

5. Considering the above calculations, appellant is entitled for following compensation:

Particulars	Rs.	Entitlement
Notional Income	Rs.	4,000.00
Future prospects		1,600.00
Multiplier Rs. 5600 X 12 X 16	Rs.	10,75,200.00
Medical Treatment	Rs.	35,000.00
Artificial Hand and Future treatment	Rs.	1,00,000.00
Special diet and travelling	Rs.	20,000.00
Pain and suffering	Rs.	50,000.00
Loss of marriage Prospects	Rs.	50,000.00

Total	Rs.	13,30,200.00
Less compensation awarded by the Tribunal	Rs.	2,65,400.00
Total enhanced compensation	Rs.	10,64,800.00

Considering the above calculations, the claimant is entitled for enhanced compensation of Rs.10,64,800/-.

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

ORDER

- (i) The appeal is allowed.
- (ii) The appellant/ claimant is entitled for enhanced compensation amount of Rs.10,64,800/- @ 7.5 interest per annum from the date of filing of claim petition till realisation of the amount.
- (iii) Respondent No. 2 / Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
- (iv) The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

7. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)