

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1161 OF 2016

1. **Shivaji Ananda Panire** }
Age-45 years, Occ : Milk Business }
R/at Karve tal, Walwa, District-Sangli } ...Appellant

Versus

1. **United India Insurance Co. Ltd.** }
Samarth Mansion, Mahaveer Nagar, Vakhar }
Bhag, Near Dena Bank, Sangli }

2. **The Secretary** }
Prakash Shikshan Prasarak Mandal, Urun }
Islampur, Taluka-Walwa, District-Sangli }

3. **Shri.Parshuram Shivaji Hadve** }
Age-35, Occ : Driver }
R/o. Bahe, Taluka Walwa, District-Sangli } ...Respondents

Mr.Umesh R. Mankapure i/b Ms.Bhavika Shinde, for the
Appellant.

Ms.Poonam Mital, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 7th 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 due to accidental injuries the Claimant has suffered 90% permanent physical disability, but Tribunal has not awarded future prospects. At the time of the accident the Claimant was doing marketing business and was earning Rs.6,000/- per month, but the Tribunal has considered monthly income of Claimant at Rs.3,000/-, which is on lower side. The learned counsel further submitted that the Tribunal has awarded compensation under other heads on lower side, it be awarded.

3. It is contention of the learned counsel for the Respondent-Insurance Company that while passing the order the Tribunal has considered all the aspects on that basis judgment and order is passed. No interference is required in it.

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

5. It is Claimant's case that due to accidental injuries the Claimant has suffered 90% permanent physical disability. To

prove the disability the Claimant has examined Dr. Avinash Patil PW-2 at Exhibit-29. He has stated that due to accidental injuries Claimant has suffered severe crush injuries to right lower limb and the Claimant has suffered disability of 90%, while dealing with issue of disability the Tribunal has considered 50% disability. I am unable to understand the observations of the Tribunal as PW-2 who is expert witness has stated that after examining the Claimant he has issued disability certificate, he is expert witness, there is no reason to disbelieve his evidence. To prove the income, the Claimant has examined himself he has stated that at the time of accident he was doing milk business, and he was earning Rs.6,000/- per month. While dealing with the issue of income of the Claimant, the Tribunal has observed that no evidence was produced on record to show income of the Claimant on that basis the Tribunal has considered monthly income of the Claimant at Rs.3,000/-, in my view it is on lower side, as the Claimant was the sole earning member of his family, he was maintaining his family, hence I am considering Rs.4,000/- as monthly income of the Claimant.

6. It has come in evidence of PW-2 Dr. Patil that further surgery required on right leg below knee. It will cost Rs.2 lakh. The Tribunal has not awarded this amount hence, I am considering it. The Tribunal has awarded compensation for pain and suffering, special diet on lower side, I am increasing it for pain and suffering at Rs.50,000/- and for special diet at Rs.25,000/-. The tribunal has not awarded the amount for loss of expectation in life, loss of amenities in life , I am considering it at Rs.50,000/- each.

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

Particulars	Amount
Monthly Income	Rs.4,000.00
Future Prospects 25%	Rs.1,000.00
Total Income	Rs.5,000.00
Loss of Income Rs.5000 x 12 x 14	Rs.8,40,000.00
Medical Expenses	Rs.4,11,690.00
Physical Pain & Suffering	Rs.50,000.00
Loss of Amenities	Rs.50,000.00
Special Diet & Other Expenses	Rs.25,000.00
Loss due to disfigurement	Rs.50,000.00
Future Medical Expenses	Rs.50,000.00

Loss of Expectation in life	Rs.50,000.00
Total compensation	Rs.15,26,690.00
Less awarded by the Tribunal	Rs.6,97,190.00
Total Enhanced Compensation	Rs.8,29,500.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant is entitled for enhanced amount of Rs.8,29,500/- @ 7.5% interest per annum along with accrued interest thereon from the date of filing of the Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount within six weeks after receipt of the order.
- (iv) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- (v) The Claimant shall pay Deficit Court fees on enhanced amount, as per Rules.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)