

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

FIRST APPEAL NO. 595 OF 2016

Vijay Tulshiram Chopade)
Age: 42 years, Occ: Nil)
R/o. Vhale Tal. Madha)
Dist. Solapur)....Appellant
(Org. Claimant)

Versus

1. Sanjay Shivaji Kore)
Age_ Adult, Occ- Business)
R/o. Nagaj Tal. Kavathemahankal)
Dist. Sangli.)

2. The New India Assurance Co. Ltd.)
Park Chowk Solapur)....Respondents
(Org. Respondents)

Mr. Rajshekhar S. Alange, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd FEBRUARY, 2024.

Oral Judgment. :

1. By this appeal, the Appellant is seeking enhancement of

compensation.

2. It is contention of learned counsel for the Appellant/Claimant that Appellant was doing milk business and had Agricultural land and he was earning Rs.6,000/- per month from agriculture labour work and Rs.6,000/- from milk business. He had agricultural land and he would get Rs.1,00,000/- per year from agricultural income. The tribunal has considered monthly income of the Claimant at Rs.7,000/- per month, which is on lower side. Learned counsel further submitted that due to accidental injuries left leg of the Claimant below knee is amputated, due to amputation of leg, the Claimant is unable to do any agricultural work, there is 100% functional disability but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has not awarded future prospects. Learned counsel further submitted that the Tribunal has awarded compensation under other heads on lower side, it be awarded. Hence requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent/Insurance Company that while awarding compensation

the Tribunal has considered all the aspects. Learned counsel further submitted the doctor who had given disability certificate to the Claimant, in cross-examination has admitted that he has not mentioned in his disability certificate that patient cannot do hard work and 70% disability is caused to his left leg. Learned counsel further submitted that the compensation awarded by the Tribunal is proper 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, Solapur (for short “the Tribunal”).

5. While dealing with the issue of income of the claimant, the Tribunal has considered monthly income of the claimant at Rs.7,000/- per month. While awarding compensation the Tribunal has considered 50% disability of the Claimant and on that basis, the Tribunal has considered monthly income of the deceased at Rs.3,500/- per month. The Respondent/Insurance Company has not challenged the income of the claimant.

6. It is claimant's case that due to accidental injuries, his left leg is amputated below the knee. To prove it, the claimant has examined PW-2 Dr. Shekhar Chidgupkar at Exhibit-34, he has stated that due to accidental injuries, left leg of the Claimant is amputated below knee joint and he has issued disability certificate of 70% which is at Exhibit-36. In cross-examination, he has admitted that in disability certificate, he has not mentioned that the Claimant cannot do hard work and 70% permanent disability is in respect of left leg. While dealing with the issue of disability of the Claimant, the Tribunal has observed that considering the evidence of Doctor. The Tribunal has considered disability of the Claimant at 50%. In my view, the Claimant was agriculture labour and he was doing milk business. He has stated in his examination-in-chief that after the accident, due to amputation of leg, he is unable to do his work. Doing work in agriculture land is hard work as well as for doing milk business, the person has to go from one place to other place. Left leg of the Claimant is amputated. There is 100% functional disability of the Claimant. Hence, I am considering 100% functional disability of the Claimant. While awarding compensation, the Tribunal has applied wrong multiplier of 13, it should be 14. The Claimant is entitled for

future prospects. As per 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. The Tribunal has awarded Rs.20,000/- for special diet hence, I am considering Rs.50,000/-. The Tribunal has not awarded loss of income during the treatment hence, I am considering Rs.21,000/-. The Tribunal has not awarded attendant charges hence, I am considering Rs.25,000/-. The Tribunal has not awarded compensation for loss of amenities in life hence, I am considering Rs.1,00,000/-.

7. Considering the above, calculations, the claimants is entitled for following compensation.

Monthly Income	Rs.7,000/-
Annual Income	Rs.84,000/-
Add: 25% future Prospects	Rs. 21,000/-
Total Income	Rs.1,05,000/-
Multiplier (Rs.1,05,000/- X 15)	Rs.14,70,000/-
Medical Expenses	Rs.71,546/-
Loss of income during treatment	Rs.21,000/-
Special Diet	Rs.50,000/-
Pain and Suffering	Rs.1,00,000/-
Attendant Charges	Rs.25,000/-
Total compensation	Rs.18,37,546/-
Less awarded by the tribunal	Rs.7,13,546/-
Enhanced amount	Rs.11,24,000/-

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

ORDER

- i. Appeal is allowed.
 - ii. The Claimant is entitled for enhanced amount of Rs.11,24,000/- @ 7.5% interest 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 Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)