IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2599 OF 2005

	Jalindar Malhari Ware Age 30 years, Occ : Nil, Res. At : Jarkarwadi, Tal. Ambegaon, District : Pune	...Appellant(Original Applicant)
	versus	
1	Sopan Narayan Jadhav, Age : Adult, Occ : Business, Res. At. Kurawandi, Tal. Ambegaon, Dist. Pune.	
2	United India Insurance Co. Ltd., Kubera Chambers, Shivajinagar, J. M. Road, Pune – 411 002.	...Respondent (Original Opponents)

Mr. Uday B. Nighot, Advocate for the Appellant.
Ms. Varsha Chavan, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th FEBRUARY, 2024.

Oral Judgment :

1. By this appeal, the claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that due to the accident, the claimant has suffered injury to his right hand and he has suffered 50% permanent disability. Though disability is 50%, the claimant has suffered 100% functional disability. The claimant was

working as Godown Manager and he was getting salary of Rs.8000/- per month. Due to permanent physical disability, the claimant has lost his job. While awarding compensation, the Tribunal has not considered this fact and has awarded compensation on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that the claimant had sustained injury to his right hand. There is no 100% functional disability as he was Godown Manager. The income of the claimant was not proved before the Tribunal as the witness who deposed as employer of the claimant did not produce any document to show that he was authorised to depose. The Tribunal has considered all the aspects while passing the 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, Pune, (for short "the Tribunal").

5. It is claimant's case that due to accidental injury, his right hand was crushed and he has sustained 50% permanent physical disability. The disability certificate is not challenged by respondent – Insurance Company. Hence, I am considering 50% permanent disability. It is claimant's case that prior to 5 years of the accident, he was serving as Godown Manager in Sharda Agro Trading Co. Ltd. and he was drawing salary of Rs.8,000/- per month. In support of his evidence, the claimant

examined AW3-Mr. Ramdas Kanaskar, Manager of Sharda Agro Trading Co. Ltd.. He has stated that the claimant was working as Godown Manager in their company and he was getting salary of Rs.8,000/- per month. After the accident, the claimant could not do any writing work, hence, he was sacked. The salary certificate is at Exhibit-48. In cross-examination, he has stated that Shahajirao Wholmukhe is the owner of Sharda Agro Trading Company. He admitted that he has not produced muster roll. He further admitted that the claimant was in temporary service, he had not brought any authority letter to show that the employer authorised him to issue this certificate. While awarding compensation, the Tribunal has not considered monthly income of the claimant and has not applied multiplier. It has come on record that the claimant has suffered 50% permanent disability. While awarding compensation, the Tribunal should have considered the monthly income of the claimant and multiplier should have been applied. Considering the evidence on record, I am considering Rs.8,000/- as monthly income of the claimant.

It is contention of learned counsel for the appellant that no authority letter was produced by AW3 on record to show that he was authorised by the Company. In my view, AW3 was the manager of the company, he has stated on oath before the Tribunal that he was the manager of the company for 15 years, not bringing authority letter from the owner cannot be a ground to disbelieve his evidence. As it has come on record that the claimant was getting salary of Rs.8,000/- and salary certificate is produced to that effect, I am considering the salary of claimant at Rs.8,000/- per month.

At the time of the accident, the claimant was 29 year old, the proper multiplier is 17. Though claimant has suffered 50% disability but it has come in the evidence of PW3 that the claimant was unable to write, therefore, he was sacked, hence the functional disability is 100%. The Tribunal has not awarded the amount for loss of amenities of life and loss of future income.

Considering the above calculations, the claimant is entitled for following compensation :

Particulars		**Amount**
Monthly Income	Rs.	8000.00
Permanent Disability 50%	Rs.	50000.00
Medical Expenses	Rs.	156000.00
Special Diet	Rs.	15000.00
Pain and Suffering	Rs.	15000.00
Loss of Earning during period of Treatment	Rs.	24000.00
Loss of Income (Rs.8000/- x12 (months) x 17(multiplier)	Rs.	1632000.00
Loss of future prospects(40% of Rs. 1632000/-)	Rs.	652800.00
Loss of Amenities	Rs.	100000.00
Future Medical Expenses	Rs.	100000.00
Total	Rs.	2744000.00
Less compensation awarded by Tribunal	Rs.	360000.00
Enhanced compensation	Rs.	2384000.00

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

O R D E R

1. The appeal is allowed.

2. The claimant is entitled for enhanced compensation of Rs. 23,84,000/-. Out of this amount, the claimant is entitled for interest @ 7.5% interest per annum on Rs.17,31,200/- from the date of filing claim petition till realisation of the amount and no interest is payable on Rs.6,52,800/- i.e. future prospects amount.

3. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest as stated in clause (2) within eight weeks from the receipt of this order.

4. The claimants is permitted to withdraw the enhanced amount along with accrued interest thereon.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)