

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 581 OF 2005

Satyawan Keshav Manjarekar
R/o. C5/18/1:2, Sector 1-A, C.B.D.,
Post Konkan Bhavan, Navi Mumbai- 400 614.

....Appellant
(Org. Claimant)

Versus

1. Mr. Dilip Shrirang Ghanvat,
6, Rajhans, Manpada Road, Dombivali (E), 431 201

2. The New India Assurance Co. Ltd.,
New India Assurance Bldg., Gokhale Road,
Thane 400 602.

(Org
Opponents)
... Respondents.

Mr. Siddharth R. Ronghe, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for the Respondent No 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th FEBRUARY, 2024.

ORAL JUDGMENT. :

1. By way of this Appeal the Claimant is seeking enhancement of compensation.

2. It is contention of learned Counsel for the Appellant/Claimant, that the Claimant has suffered 70% permanent physical disability due to accidental injury but, the Tribunal has

considered 40%, which is not proper. Learned Counsel further submitted that the Tribunal has applied wrong multiplier of 12, as per the age of the Claimant, it should be 16. Learned Counsel further submitted that the Tribunal has not awarded compensation under non pecuniary head, it be awarded. The Tribunal has not awarded future prospects, it be awarded, hence requested to allow the Appeal.

3. It is contention of learned Counsel for the Respondent/Insurance Company that the Tribunal has considered all the aspects while passing Judgment and Order, no interference is required in it, hence, requested to dismiss the Appeal.

4. I have heard both learned Counsels, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Thane, (for short “the Tribunal”).

5. It is the Claimant’s case that, due to accidental injuries the Claimant has suffered 70% physical permanent disability. To prove it, the Claimant has examined doctors. Considering evidence on record, the Tribunal has considered disability of the Claimant at 40%. I am unable to understand the observations of the Tribunal that on the Court query and answer given to it by the doctor who had treated the Claimant, and has given the disability certificate, the Tribunal has

reduced disability of the Claimant from 70% to 40%, which is erroneous.

6. To prove the disability, the claimant- Satyawan has examined himself at Exhibit-26. He has stated that due to accidental injuries, he sustained injuries on right leg knee, he is unable to fold his leg completely. Surgery was performed on his leg. The doctor has given 75% disability certificate. In cross-examination, he admitted that the nails fixed around his leg were removed. In support of his evidence, the claimant has examined PW2-Dr. S. Thorat at Exhibit-44. He has stated that due to accident, the claimant has sustained following injuries :

1. Right side compound fracture of shaft femur. C.L.W. 3" x 1"
2. Right side compound comminuted fracture lateral condyl due to wound 4" x 3" over post lateral aspect of knee.
3. C. L. W. Over face 1" x 1.1/2" on right eyebrow and chin.
4. Friction abrasion over left thigh 6" x 6"
5. C. L. W. Over left leg 2" x 1" skin deep.
6. C. L. W. Over hand 4th web space 2" x 1"

When Dr. S. Thorat examined the claimant for issuing disability

certificate, he found as under :

1. Right side delayed union of fracture shaft femur.
2. Right knee stiffness movement range 0 to 70%.
3. Hypertrophied scar over left thigh.

This witness further stated that due to disability, it was not possible for the claimant to continue the same job and he has issued total permanent disability at 70%. In cross-examination, a Court question was put to this witness though the fracture was in the process of getting united, at a later date, it was likely to get united and the knee stiffness can also get reduced by passage of time to some extent. This witness further stated that the claimant was finding it difficult in climbing staircase and also sitting with crossed leg, his movement of knee joint was also painful. He further admitted that he has examined the claimant clinically and radiologically and his movement's had increased from 0 degree to 70 degree to 0 degree to 90 degree. He further admitted that this would also reduce the percentage of his disability though it may not make much difference in his difficulty in climbing the stairs but the claimant can continue the job of supervising the work from the ground level. He further admitted that there was no possibility of further reduction in stiffness

of knee joint and, therefore, the same can be termed as permanent disability

7. While dealing with the issue of disability, the Tribunal has observed that answers given by the doctor to the query of the Court and also taking into account the nature of the injuries and the reply given by the witness in cross-examination, it would be appropriate to take the extent of disability at 40%. I am unable to understand the observations of the Tribunal as PW2-, who is the expert witness, has specifically stated that he had examined the claimant clinically and radiologically before issuing the disability certificate and the claimant has suffered 70% disability. This witness has stated that the claimant is unable to climb stairs and he can supervise the work from ground level. The claimant is a Civil Engineer and, as per the evidence of this witness, the claimant cannot climb staircase due to disability, so he cannot do his job with his full potential it shows that though claimant has suffered 70% disability, his functional disability is 100%.

8. It is the Claimant's case, that the Claimant was working as Civil Engineer with M/s Omprakash and Company and he was drawing salary of Rs. 6,300/- p.m. To prove the income of Claimant, the Claimant examined himself and PW-2 Ashok Pradhan, authorized

Officer of M/s. Omprakash and Company, he has stated that the Claimant was working in their Company as Civil Engineer and he was drawing monthly salary of Rs. 6,500/- p.m. It has come on record, the last drawn salary of the Claimant was Rs. 6,300/- but the Tribunal has considered salary of the Claimant at Rs. 5,500/- p.m, which is on lower side, hence, I am considering Rs. 6,300/- as monthly income of the Claimant. The Tribunal has not awarded future prospects. The Tribunal has applied multiplier of 12. At the time of accident, the Claimant was 31 years old so, proper multiplier is 16. The Tribunal has awarded compensation of Rs. 45,000/- for pain and suffering. As the Claimant has suffered 70% permanent physical disability and it is come on record that after the accident, due to disability, he has been removed from the service hence, I am considering it Rs. 50,000/-. The Tribunal has not awarded the compensation for loss of amenities in life, I am considering it Rs. 50,000/-. The Tribunal has awarded Rs. 5,000/- for Special Diet, I am considering it Rs. 5,000/-. The Tribunal has not awarded Conveyance, I am considering it Rs. 5,000/- .

Considering the above calculations, the Claimants are entitled for following compensation.

Monthly Income	Rs.6,300/-
Annual Income Rs.6,300/- X 12	Rs.75,600/-
Add 50% future prospects	Rs. 37,800/-
Total	Rs. 1,13,400/-
Multiplier Rs.1,13,400/- X 16	Rs.18,14,400/-
Pain and Suffering	Rs. 50,000/-
Loss of amenities of life	Rs.50,000/-
Conveyance	Rs. 5,000/-
Special Diet	Rs. 5,000/-
Total Compensation	Rs.19,24,400/-
Minus amount awarded by the Tribunal	Rs.4,84,800/-
Enhanced amount	Rs.14,39,600/-

9. In view of above, I pass following Order.

ORDER

- a) The Appeal is allowed.
- b) The claimant is entitled for enhanced compensation amount of Rs. 14,39,600/- @ 7.5% per annum from the date of filing claim petition till realisation of the amount.
- c) Respondent No.2/Insurance Company shall deposit the enhanced amount alongwith accrued interest within six weeks.

- d) Appellant/claimant is permitted to withdraw deposited amount along with accrued interest thereon.
10. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)