

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

FIRST APPEAL NO. 207 OF 2020

Nilesh Babru Sonawane)
Residing at: Samart Society,)
C/o Gautam R. Dhaware,)
Jogeshwari-Vikroli Link Road,)
Powai, Mumbai – 400 072)Appellant
(Orig. Claimant)

Versus

1. Kailas Vasudev Naik,)
At Post: Agashi,)
Somadi, Via Virar (W))
Dist: Thane.)

2. New India Assurance Co. Ltd.)
Moti Mahal, 6th Floor,)
Jamshedji Tata Road,)
Churchgate, Mumbai- 400 020)Respondents

Ms. Ketki Gokhale i/b A. M. Gokhale, Advocate for the Appellant.
Ms. Jyoti Bajpayee, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH, 2024.

Oral Judgment. :

1. By way of this appeal, the Appellant/Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant/Claimant that due to accidental injuries, the Claimant has suffered 89% permanent physical disability. The both legs of the Claimant have been amputated. The claimant was working as a cleaner and he was earning Rs.4,000/- per month, but the Tribunal has considered his monthly income at Rs.3,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has awarded compensation on lower side under the other heads. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that as per the evidence produced on record that the Claimant was working as a cleaner and he was getting Rs.3,000/- per month as salary. On that basis, the Tribunal has considered his monthly income, which is proper. Learned counsel further submitted that considering evidence on record the Tribunal

has awarded compensation, which 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, Mumbai (for short “the Tribunal”).

5. It is claimant’s case that claimant was working as a cleaner on Sachin Transport. Due to accidental injuries, he has suffered 89% permanent physical disability and his functional disability is 100%, as he is not able to work as cleaner or labourer. To prove the income, the claimant has examined himself at Exhibit 16. He has stated that at the time of accident, he was working as a cleaner at Sachin Transport and he was getting salary of Rs.4,000/ per month. In supports of his evidence, the claimant has examined PW-2 Prakash Dage at Exhibit-25 Proprietor Sachin Transport. He has stated that claimant was working as cleaner and he was paying him Rs.4,000/- per month as salary. Considering evidence on record the Tribunal has considered monthly income of the Claimant at Rs.3,000/- per month. I am unable to understand the observations of the Tribunal as PW-2, who is the Proprietor of Sachin Transport has stated that claimant was working in their transport as cleaner and he was paying him salary at

Rs.4,000/- per month. There is no reason to disbelieve evidence of this evidence. Hence, I am considering Rs.4,000/- as monthly income of the claimant. While awarding compensation the Tribunal has applied multiplier 16, it should be 18. As claimant was 19 years old at the time of accident hence, I am considering multiplier of 18. The Tribunal has not awarded future prospects. The claimant has suffered 89% permanent physical disability due to accidental injuries, it is 100% functional disability. As per the 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 40% future prospects. The Tribunal has awarded compensation for pain and suffering at Rs.75,000/- as both legs of the claimant have been amputated hence, I am considering additional Rs.50,000/-. The Tribunal has awarded Rs.1,20,000/- for prosthetic leg as both legs of the claimant have been amputated. At the time of accident, he was 19 years old. He needs the amount to replace of his leg of every 4 to 5 years hence, I am considering Rs.15,00,000/- for prosthetic leg. The Tribunal has not awarded compensation for loss of amenities in life hence, I am considering Rs.1,00,000/- for it. The Tribunal has not awarded amount for loss of expectation of life, I am considering it at

Rs.50,000/-. The Tribunal has awarded Rs.50,000/- for loss of marriage prospects, I am considering additional Rs.50,000/-.

6. Considering the above calculations, the claimant is entitled for following compensation.

Monthly Income	Rs.4000/-
Annual Income	Rs.48,000/-
Add: 40 future prospects	Rs.19,200/-
Multiplier	Rs.12,09,600/-
Loss of income during hospitalization	Rs.24,000/-
Medical Expenses	Rs.52,022/-
Future medical expenses (including expenses for prosthetic limb)	Rs.15,00,000/-
Conveyance	Rs.10,000/-
special diet	Rs.10,000/-
Pain and suffering	Rs.1,25,000/-
Loss of amenities	Rs.1,00,000/-
Loss of marriage prospectus	Rs.1,00,000/-f
Loss of expectancy of life	Rs.50,000/-
Total compensation	Rs.31,80,622/-
Less awarded by the Tribunal	Rs.8,93,099/-
Enhanced amount	Rs.22,87,523/-

7. In view of above, I pass following orders.

ORDER

- i. Appeal is allowed.
- ii. The claimants is entitled for enhanced amount of **Rs.22,87,523/-@ 7.5%** from the date of filing claim till realisation of the amount.

- iii. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.
 - iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - vi. The Claimant shall pay the deficit Court fees, if any, on enhanced amount as per Rule.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)