IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1736 OF 2010

Mr. Deepak Ramlakhan Jaiswal Age : 22 years, Occu : Student Residing at Bhaipada, Santoshinagar, Boisar, Tal-Palghare, Dist-Thane	… Appellant
Versus	
1 Mr.Kamalakar N. Arekar At Post Dhandi, Tal.- Palghar, Dist-Thane 2 The United India Insurance Co. Ltd. 17, Star Trading Center, Mandepeshwar Road, Borivali (W), Mumbai-92	…Respondents

………..

Mr. S.R.Chavanke, Advocate for the Appellant.
Mr. Nikhil Mehta i/b. KMC Legal Venture Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 28th MARCH, 2024.

<u>ORAL JUDGMENT :</u>

1. By way of this appeal appellant/claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that at the time of accident claimant was 15 years old. Due to accidental injuries he has suffered 28% permanent physical disability but the Tribunal has awarded lumsum amount of Rs.50,000/- as compensation, which is on lower side. Learned counsel further submitted that as per the view of Hon'ble Apex Court in the case of ***Master Mallikarjun V/s. Divisonal Manager, the National Insurance Company Limited and Anr., reported in 2013 AIR SCW 6452,*** the claimant is entitled for Rs.3,00,000/- hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.2/Insurance Company that claimant has suffered only fracture injuries. The disability of the claimant is not proved before the Tribunal, the Tribunal has considered all the aspects while passing Judgment and Order hence no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Palghar (for short "**the Tribunal**"). At the time of accident claimant was 15 years old, due to accidental injuries the claimant has suffered 28% permanent physical disability. To prove the disability the claimant has examined PW-2 Dr. Charan Jadhav. He has stated that due to accidental injuries the claimant has suffered 28% permanent physical disability. This witness was not cross-examined by the respondent No.2/Insurance Company nor the Insurance Company has challenged the disability of the claimant. The Tribunal has awarded lumpsum amount of Rs.20,000/- for medical expenses and Rs.30,000/- for pain and suffering. In my view, it is on lower side. As per view of Hon'ble Apex Court in the case of ***Master***

***Mallikarjun (supra)**,* the claimant is entitled for Rs.3,00,000/- as compensation for 28% permanent physical disability. As the claimant has received Rs.50,000/-, after deducting this amount, the claimant is entitled for Rs.2,50,000/- as compensation under all head and I pass following order.

<u>O R D E R</u>

i. The appeal is allowed.

ii. The appellant /claimant is entitled for enhanced amount of Rs.2,50,000/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount.

iii. The respondent No.2-Insurance Company shall deposit the enhanced amount along with interest within six weeks after receipt of the order.

iv. The claimant is permitted to withdraw the enhanced amount deposited by the Respondent No.2-Insurance company along with accrued interest thereon.

v. The appellant/claimant shall pay the deficit Court fees on enhanced amount as per rule.

5. The appeal is disposed of. Record and Proceeding be sent back.

(SHIVKUMAR DIGE, J.)