IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1752 OF 2010

Master Satish Dundaji Sambare)
Age: 17 years, Occu: Student,)
The applicant being minor represented)
through his father i.e. Mr. Dundaji)
Narayan Sambare,)
Age-43 years, Occu: Labourer,)
Both residing at Kev. Padvalpada,)
Tal- Vikramgad, Dist – Thane)....Appellant

Versus

1. Mr. Karunakar Shankar Poojari,)
Shop No. 14, Sat Rasta,)
Sanduwadi, Merry Land Complex,)
Chembur, Mumbai)

2. The National Insurance Co. Ltd.)
Jai Commercial Complex,)
Cadbury naka, Khopat,)
Dist – Thane.)....Respondents

Mr. S. R. Chavanke, Advocate for the Appellant.
Smt. Urmila K. Sanil, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd FEBRUARY, 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 Appellant/Claimant that the Claimant has suffered 15% physical permanent disability but, the Tribunal has considered only 10% physical permanent disability, which is not proper. Learned counsel further submitted that, as per view of the Hon'ble Apex Court in the case of ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited & Anr.***[1] the claimant is entitled for Rs.3,00,000/- compensation excluding medical bills, it be awarded.

3. Learned counsel for the Respondent No.2/Insurance Company submitted that the doctor who had issued the disability certificate was treating doctor and he has given the exorbitant disability. The order passed 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, Palghar (for short "the Tribunal).

5. To prove the disability, the Claimant has examined PW-2

1 Civil Appeal No. 7139 of 2013 (Arising out of S. L. P. (Civil) No. 1676 of 2012) dated 26th August, 2013

Dr. Jadhav, he has stated that the Claimant has suffered 15% disability. While dealing with the issue of disability, the Tribunal has held that the disability certificate issued by the doctor is on higher side. Hence, the Tribunal has considered disability of claimant at 10%. I do not find infirmity in it. While calculating compensation, the Tribunal has awarded Rs.1,00,000/- as compensation amount, including medical expenses of Rs.45,000/-. The Claimant is 14 years old boy, in my view it is on lower side. As per the view of Hon'ble Apex Court in the case of ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited & Anr.***[2] for 10% disability, the claimant is entitled for Rs.3,00,000/- compensation excluding medical expenses. Hence, I am considering compensation of Rs.3,00,000/- excluding medical expenses.

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

As per Judge at Mallikarjun pain & suffering, Mental & Physical shock etc.	Rs.3,00,000/-
Add. Medical Expenses	Rs.45,000/-
Total amount	Rs.3,45,000/-
Less compensation awarded by the tribunal	Rs.1,00,000/-

2 Civil Appeal No.7139 of 2013 (Arising out of S. L. P. (Civil) No. 1676 of 2012) dated 26th August, 2013

Enhanced Compensation	**Rs.2,45,000/-**

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

ORDER

i. Appeal is allowed.

ii. The claimant is entitled for enhanced amount of Rs.2,45,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

iii. The Respondent No.2/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.

v. The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per Rule.

8. All pending application, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)