

[illegible]

Mr. Saurabh Utangale i/b. Utangale & Co., Advocate for the Appellant.
Mr. Nikhil Narendra Pawar, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th 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 claimant that due to the accidental injuries, the claimant has suffered 30% permanent physical disability, his left leg is shortened by two inches, he has developed deformity in knee with ligament injury to knee. While awarding compensation, the Tribunal has not considered the last monthly income of the claimant as well as future prospects have not been awarded. The Tribunal has considered 20% contributory negligence of the claimant, which is erroneous, as claimant was a pillion-rider. The claimant was 1st year B.Tech student. Due to accidental injuries, he could not do movement properly and it has affected on his future career, hence, requested to allow the appeal.

3. Learned counsel for respondent No.2-Insurance Company submitted that the Tribunal has considered all the aspects while passing the order. No interference is required in it. The judgment and order passed by the Tribunal is legal and valid.

4. I have heard both learned counsel, perused the judgment order passed by Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

5. It is claimant’s case that on 3rd October 2018, the claimant was proceeding with his friend – Nabarun Senon on motorcylce bearing No. MH-12-EW-2761 from Pune towards Mumbai via Mumbai-Pune Highway. The speed of the motor-cycle was moderate. The claimant’s friend was riding the motor-cycle, when they reached Palaspa Phata near Panvel,

the offending motor bus came from the opposite direction in high and excessive speed and gave dash to the motor-cycle, as a result, claimant and his friend fell down on the road and sustained serious injuries. An offence was registered against the driver of offending bus. Due to the accidental injuries, the claimant has suffered 30% permanent physical disability. To prove the negligence of the bus-driver, the claimant examined himself. He has stated that the accident occurred due to negligence of the bus-driver. While dealing with the issue of negligence, the Tribunal has observed that the accident occurred on Express way, Mumbai-Pune Highway, where there is heavy traffic when the vehicles are supposed to be driven in a speed, naturally it cannot be said that the bus alone was at speed. There is reason to believe that the motor-cycle too was moving in a speed when it was moving on highway, therefore, the driver of bus alone cannot be held responsible for it especially considering the ages of the claimant and motor-cyclist, both being college students. The Tribunal apportioned negligence at 80%-20% between the driver of bus and motor-cyclist for the purpose of assessing compensation to be awarded to the claimant. I am unable to understand to observations of the Tribunal in respect of negligence. In my view, for the said accident, an offence was registered against the driver of the offending bus. To prove the negligence of motor-cycle rider, the driver of the offending bus did not enter into the witness box. The claimant was a pillion rider, then, the question of contributory negligence of the claimant, would not arise.

But this fact is not considered by the Tribunal and without going through the evidence on record, the Tribunal has held that there was 20% contributory negligence of the claimant, which is erroneous. Hence, I hold that the accident occurred due to sole negligence of the driver of the offending bus.

It has come on record that the claimant was 1st year B.Tech student. The Tribunal has not considered monthly income of the claimant. Considering the evidence on record, I am considering monthly income of the claimant at Rs.12,000/-.

The Tribunal has not awarded future prospects. 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 future prospects.

Respondent No.2-Insurance Company has not challenged the disability of the claimant. It has come on record that due to accidental injury, the right leg of the claimant is shortened by two inches, hence, I am not discussing on the part of disability.

In view of above, the claimants are entitled for following compensation :

Particulars	Amount
Notional Monthly Income	Rs. 12500.00
Annual Income	Rs. 150000.00
40% future prospects	Rs. 60000.00

Total	Rs. 210000.00
Rs.210000/- X 18(multiplier)	Rs. 3780000.00
Total Compensation	Rs. 3780000.00

The claimant is entitled for this amount.

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 compensation of Rs.37,80,000/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 3. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
 4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)