

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

FIRST APPEAL NO. 719 OF 2023

Mr. Kishore Krushna Patil)
Aged: 47 years, Occu: Service)
Residing at: Shadaval Apt. Room No.204,)
2nd floor, Near Boisar Bhaji Market,)
Behind Vasai Janata Bank,)
Tal: Palghar, Dist: Thane)....Appellant

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Versus

Tarapur Atomic Power Station)
Stores Officers Central Stores Unit,)
Administrative Officer, G.S.B.,)
B.A.R.C, Boisar, Tarapur,)
Tal: Palghar, Dist: Thane)
(Owner of the Tata Sumo bearing No.)
MH-04-CD/9733)....Respondent

Ms. Amrin Khan i/b Mr. A. M. Gokhale, Advocate for the Appellant.
Mr. Neel Helekar a/w Ms. Dhanshree Bhale i/b Mr. Sagar Ambedkar,
Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. By 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 85% physical permanent disability, the functional disability is 100%. After the accident, the claimant is job less but, this fact is not considered by the Tribunal. Learned counsel further submitted that the evidence was produced on record to show that the claimant was earning Rs.5,000/- per month but the Tribunal has considered Rs.3,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has awarded compensation on lower side under other heads, it be awarded. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Corporation that the claimant was working on contractual basis. No evidence was produced on record to prove the income of the claimant. On that basis, the Tribunal has considered monthly income of the Claimant at Rs.3,000/- per month, which is proper. Learned counsel further submitted that considering evidence on record, the Tribunal has passed the reasoned judgment and order 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. Admittedly, the Applicant has suffered 85% permanent disability due to accidental injuries. The Respondent/Corporation has not challenged the disability of the claimant. It is claimant’s case that he was serving with Wadilal Dairy International Limited and he was getting Rs.5,500/- per month. To prove the income of the Claimant, the Claimant has examined PW-2 Kunal Gharat at Exhibit-46 manager of Wadilal Dairy International Limited Tarapur, MIDC. He has stated that the Claimant was serving as a machine operator in their company, at that time his monthly salary was of Rs.5,500/- per month. The salary certificate is at Exhibit-49. In cross-examination, this witness admitted that he has no personal knowledge about the contents of the certificate. He further admitted that he has not produced any documentary evidence on record to show that the claimant was serving as a machine operator and his salary was of Rs.5,500/- per month.

6. Considering evidence on record, the Tribunal has considered monthly income of the claimant at Rs.3,000/- per month, in my view, it is on lower side. It has come on record, the claimant

was machine operator, he was skilled labourer and PW-02 Kunal Gharat has stated that the claimant was serving in their company as a machine operator and the claimant was getting salary of Rs.5,500/- per month. There is no reason to disbelieve the evidence of this witness as salary certificate produced on record, which is at Exhibit-49. Though, in cross-examination, this witness has stated that no documents were produced on record to show that the claimant was working as machine operator in his company, in my view, it has come on record that the claimant was skilled labour and as per the Minimum Wages Act prevailing those days, the monthly income of the claimant would go more than Rs.5,000/-. Considering this fact, I am considering the monthly income of the claimant at Rs.5000/- per month.

7. The Tribunal has not awarded the amount for future medical expenses for prosthetic limb. As per the view of Hon'ble Apex Court in the Case of **Shabbir Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U. P. State Road Transport Corporation¹**, the claimant is entitled for Rs.7,50,000/- for prosthetic limb. Hence, I am considering Rs.7,50,000/- for prosthetic limb. The Tribunal has

¹SCC (Civil Appeal Nos. 9070-9071 of 2022)

applied wrong multiplier while calculating the compensation as well as was not awarded future prospects. At the time of accident, the claimant was 40 years old, so proper multiplier is 15. It has come on record, after the accident the claimant has lost his job and he is not doing any work after the accident. Hence, his functional disability is 100%. hence, I am considering it as 100%. The Tribunal has not awarded the amount for special diet and conveyance. Hence, I am considering Rs.25,000/- for special diet and conveyance.

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

Monthly Income	Rs.5000/-
Annual Income Rs.5000/- X 12	Rs.60,000/-
Add: 30% future prospects	Rs.18,000/-
Total	Rs.78,000/-
Rs.78,000/- X 15 (multiplier) = Rs.11,70,000/- less Rs.3,67,200/- (awarded by the Tribunal)	Rs.8,02,800/-
Future Medical Expenses (Including expenses for Prosthetic Limb)	Rs.7,50,000/-
Towards Special diet and Conveyance	Rs.25,000/-
Total Enhanced Compensation	Rs.15,77,800/-

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

ORDER

i. Appeal is allowed.

- ii. The Appellant/Claimant is entitled for enhanced compensation of Rs.15,77,800/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 - iii. The Appellant/Claimant is not entitled for interest on delayed period of 510 days in filing of the first appeal.
 - iv. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - v. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
10. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)