

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 654 OF 2014

1. Shri Govind Mahadev Balivant
(Since Deceased by LRS)

1(a). Shobha Govind Balivant
Age- 40 years Occ-Household

1(b). Rushikesh Govind Balivant
Age- 19 years, Occ-Education

1(c). Vaishnavi Govind Balivant
Age-18 years, Occu- Education,

~~1(d). Mahadev Krushna Balivant (since deceased-
deleted)
Age- 74 years, Occu- Nil~~

1(e). Kamal Mahadev Balivant
Age- 65 years, Occu- Nil.

....Appellants

All R/o Narsinghpur, Tal Walwa, Dist Sangli.

Versus

1. Shri. Annaso Chimaji Ghatage
Age 47 years, Occ-Driver
R/o Kumthe, Tal Palus, Dist. Sangli.

2. Shri. Babasaheb Ramchandra Pawar,
Age-51 Years Occ-Owner,
R/o Kundal, Tal Palus, Dist. Sangli.

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3. Oriental Insurance Co. Ltd.
Branch Karad, Dist. Satara.

... Respondents.
(Org
Opponents)

Mr. T. S. Ingle a/w Ms. Priyanka Babar Advocate for the Appellant.
Mr. D. S. Joshi, Advocate for the Respondent No. 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th FEBRUARY, 2024.

ORAL JUDGMENT. :

1. By way of this Appeal, the Appellants/Claimants is seeking enhancement of compensation.

2. It is contention of learned Counsel for the Appellants/Claimants that the accident occurred due to sole negligence of the Driver of offending vehicle but, this fact is not considered by the Tribunal and has fixed 50% contributory negligence of the Claimant, which is erroneous. Learned Counsel further submitted that, due to accidental injuries, the Claimant has suffered 60% permanent physical disability but the Tribunal has awarded compensation amount on lower side under non pecuniary heads. Learned Counsel further submitted that the Claimant has suffered ailment of Quadriplegia, he is bedridden from the date of accident, but this fact is not considered by the Tribunal, hence, requested to

allow the Appeal.

3. It is contention of learned Counsel for the Respondent/Insurance Company that at the time of accident the Claimant was crossing the road, the accident occurred due to sole negligence of the Claimant. The Tribunal has considered all the aspects while passing the Judgment and Order, hence no interference is required in it.

4. I have heard both learned Counsels, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Sangli, (for short “the Tribunal”).

5. It is Claimant’s case that on 24.05.2006 at about 6:45 p.m. the Claimant was proceeding on Scooter with his friend and he stopped his scooter on one place and was crossing the road for urination, at that time, Truck No. MH-10 Z-584, came in high and excessive speed and gave dash to the Claimant. The driver of said truck was driving it in high and excessive speed and in rash and negligent manner. The Claimant has suffered 60% permanent physical disability due to the accidental injuries. The Respondent/Insurance Company has not challenged the disability of the Claimant.

6. While dealing with the issue of negligence, the Tribunal

has observed that accident occurred when the Claimant was crossing the road, hence there was 50% contributory negligence of the Claimant in the said accident and 50% negligence of the offending truck driver. I am unable to understand the observations of the Tribunal about fixing 50% contributory negligence on the Claimant. It has come on record that the Claimant was crossing the road for urination. The driver of offending vehicle had an opportunity to stop the truck, but it appears that the truck was in high and excessive speed and he could not control the speed and dashed the Claimant. It shows the negligence of driver of offending truck. Hence, I am considering 80% negligence of driver of offending truck and 20% of the Claimant.

7. To prove the disability of Claimant Dr. Satyajeet Patil, is examined as PW-3, He has stated that due to accidental injuries the Claimant has suffered ailment of Quadriplegia, it means weakness in both the upper limb and both lower limb and due to which, all the 4 limbs are not working, there is no flexion and extension in all 4 limbs. Considering the permanent physical disability of Claimant, the Tribunal has awarded compensation amount, in my view it is on lower side.

Considering disability of the Claimant I am awarding compensation as below:-

Monthly Income	Rs.4180/-
Add 50% future prospects	Rs. 2090/-
Total Monthly income	Rs.6,270/-
Annual Income Rs.6,270/- X 12	Rs.75,240/-
Multiplier Rs.75,240/- X 17	Rs.12,79,080/-
Medical Expenses already spent	Rs. 3,00,000/-
Future Medical Expenses	Rs. 1,00,000/-
Physiotherapy	Rs. 1,00,000/-
Attendants	Rs. 75,000/-
Conveyance	Rs. 60,000/-
Special Diet & Nourishment	Rs. 50,000/-
Loss of marriage prospects	Rs. 1,00,000/-
Pain & Suffering	Rs. 50,000/-
Total	Rs. 21,14,080/-
Deduction of 20% contributory negligence of the Claimant	Rs. 4,22,816/-
Total Compensation	Rs. 16,91,294/-
Less Awarded by the Tribunal	Rs. 9,02,462/-
Enhanced Amount	Rs. 7,88,802/-

8. In view of above, I pass following Order.

ORDER

- a) The Appeal is allowed.
- b) The Appellant/Claimant is entitled for enhanced

amount Rs. 7,88,802/- @ 7.5 interest per annum from the date of filing Claim Petition till realisation of the amount.

c) The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.

d) The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

9. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)