

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

FIRST APPEAL NO.922 OF 2023

Shri.Rajesh Govind Patil	}	
Age-53 years, Occupation : Service,	}	
R/at Room No.5, Patharli Road, Gogaras	}	
Wadi, Dombivali (East), District-Thane.	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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Date: 2024.04.16
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1. Shri.P. Thangraj Nadar	}	(Org. Opponent
Purna Village, District-Thane	}	No.1)
(Owner of Bus No.MH-04-G-5446)	}	
	}	
2. Shri.Yusuf H. Shaikh	}	(Org. Opponent
R/at Musa Nagar, Uddagir, Taluka-Uddgir,	}	No.2)
District-Latur.	}	
	}	
3. The ICICI Lombard Insurance Company	}	
Limited, Thr. Its Manager,	}	
Office at : 2 nd Floor, Office No.2023, Meher	}	
House No.15, Cawasji Ptal Stree, Fort,	}	(Org. Insurer)
Mumbai-400001	}	
(Insurer of Motor Bus bearing No.MH-04-	}	
G-5446)	}	Respondents

Ms.Rina Kundu, for the Appellant.
Ms.Varsha Chavan, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Appellant-Claimant seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant-Claimant that due to accidental injuries the Claimant has suffered 45% permanent physical disability. AT the time of the accident the Claimant was drawing salary of Rs.7,054/-, but the Tribunal has considered at Rs.5,000/-, which is on lower side. The Tribunal has not awarded future prospects, the compensation awarded under other heads is on lower side. The learned counsel further submitted that due to disability promotional chances of the Claimant has been deprived. He would have become Supervisor and his salary would have been raised more than Rs.17,000/-. But due to disability he has to take salary of Rs.8,600/- per month. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that, the Tribunal has considered all the aspects while passing judgment and order and

on that basis compensation is awarded. No interference is required in it. The learned counsel further submitted that after the accident Claimant is continued in service and his salary has been increased. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Thane.

5. Admittedly, due to accidental injuries the Claimant has suffered 45% permanent physical disability. To prove the income of the Claimant, the Claimant has examined PW-4 Kiran D'souza, H.R. of IRB Infrastructure. He has stated that, the Applicant was getting monthly Rs.7,100/- salary. The pay slip is at Exhibit-74. He has further stated that at present salary of the Claimant was Rs.8,600/-. Salary Certificate is at Exhibit-63. He further stated that the salary of the Supervisor is Rs.17,000/-. He further stated that the Claimant was appointed as Operator as he was not able to work as Supervisor. Nothing elicited in the cross-examination of this witness.

6. While dealing with the issue of income of the

Claimant the Tribunal has observed that the documents produced by PW-3 are not acceptable. Hence, the Tribunal has considered notional monthly income of the Claimant at Rs.5,000/-. I am unable to understand the observations of the Tribunal as it is Claimant's case that the Claimant was working in IRB Infrastructure and to support his evidence he has examined PW-4. The Salary Slips of the Claimant is produced on record. Due to accidental injuries, promotional chances of the Claimant has been deprived, though he continued in the service, but his promotional chances has been deprived. It has come on record that at the time of the accident he was getting salary of Rs.7,100/-, hence, I am considering his income at Rs.7,054/-. The Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimant is entitled for 30% future prospects, as he has been deprived from promotional avenue due to disability. The Tribunal has awarded Rs.50,000/- for pain and suffering, I am considering it Rs.1 lakh. For loss of amenities in

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life, the Tribunal has given Rs.50,000/-, I am considering Rs.1 lakh. The Tribunal has not awarded amount for loss of expectation of life, I am considering amount of Rs.25,000/- under this head. Considering these calculations the Claimant is entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.7,054.00
(+) Future Prospects (30%)	Rs.2,116.00
Annual Income After Future Prospects	Rs.9,170.00
Disability 45% Rs.4,126.5 Per Month X 12 X 14	Rs.6,93,252.00
Less : Granted by Tribunal	Rs.378,000.00
	Rs.315,252.00
Pain and Suffering	Rs.1,00,000.00
Loss of Amenities in life	Rs.1,00,000.00
Loss of expectation in life	Rs.25,000.00
Enhanced amount	Rs.5,40,000.00

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimant is entitled for enhanced amount

Rs.5,40,000/- @ 7.5% per annum from date of the

filing of the Claim Petition till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.

(iv) There was delay of 3 years and 111 days for filing the Appeal, hence Appellant-Claimant is not entitled for interest on compensation amount for this delayed period.

(v) The Claimant is permitted to withdraw deposited amount.

(vi) The Appellant-Claimant shall pay Deficit Court Fees on enhanced amount.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)