IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1190 OF 2013

The New India Assurance Co. Ltd.
Mata Building, Civil Hospital Road, Sangli,
through Mumbai Regional Office -I
New India Bhavan, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai- 400023. Appellant

versus

1. Tanaji Anna Bhalkar,
   Aged about 53 yrs.,
   Occ. Agricultural, R/o. Kurup,
   Dist. Sangli.

2. Sambhaji Ramchandra Shinde,
   Aged about 40 yrs. Occ: Vehicle Owner
   (Tractor and Trailor),
   R/o. Mahadevwadi, Tal-Walva,
   Dist. Sangli.

3. Sandip Ganpati Kachare,
   Aged about 25 yrs. Occ: Driver,
   R/o. Naikalwadi, Tal – Walva,
   Dist: Sangli. Respondents

WITH

FIRST APPEAL (ST) NO. 23192 OF 2016

Tanaji Anna Bhalkar, Appellant
Aged about 54 yrs., Occ. Nil.
R/o. Kurup, Dist. Sangli.

versus

1. The New India Assurance Co. Ltd.
   Through Mumbai Region Office -I
   New India Bhavan, 2nd Floor, 34/38,
   Bank Street, Fort, Mumbai- 400023.

2. Sambhaji Ramchandra Shinde,
Age 41 yrs. Occ: Vehicle Owner,
R/o. Mahadevwadi, Tal-Walva,
District: Sangli.

3. Sandip Ganpati Kachare,
Age 26 yrs. Occ: Driver,
R/o. Naikalwadi, Tal – Walva,
Dist: Sangli. Respondent

Mr. Sandeep S. Jinsiwale, for the Appellant in First Appeal No. 1190 of 2013 and Respondent No.1 in First Appeal (ST) No. 23192 of 2016.

Mr. Bhushan Walimbe a/w Mayank Tripathi, for the Respondent No.1 in First Appeal No. 1190 of 2013 and the Appellant in First Appeal (ST) No. 23192 of 2016.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th JULY, 2025.

P.C. :

1. The appellant-Insurance Company preferred Appeal against the judgment and order passed by the MACT, Islampur, Sangli (for short 'the Tribunal). The claimant has also preferred an Appeal for enhancement of compensation. As both the appeals are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned Counsel for the appellant-Insurance Company that the trolley of the tractor was insured with the appellant-

Insurance Company and head was not insured. The dash was given by the head of the tractor so, Insurance Company is not liable to pay the compensation. Learned Counsel further submitted that at the time of accident, driver of offending tractor was holding learning licence but the Tribunal has not considered this fact and has passed pay and recovery order, which is erroneous. The Tribunal should have exonerated the Insurance Company from paying compensation. Hence, requested to allow the appeal.

3. It is the contention of learned Counsel for the respondent-claimant that after giving dash by the head, the trolley ran over on the body of the claimant. The claimant had suffered 85% permanent physical disability due to accidental injuries and his right leg is amputated. The claimant was farmer and he was earning Rs.5,000/- per month from farming and milk business but the Tribunal has considered monthly income of claimant at Rs.3000/-, which is on lower side. Learned Counsel further submitted that the Tribunal has awarded compensation under other heads on lower side. No compensation is given for artificial leg, it be awarded and requested to allow the appeal filed by the claimant and dismiss the appeal filed by the Insurance Company.

4. It is claimant's case that on 11th January 2012, the claimant -

Tanaji was proceeding on his bicycle by Kurlap- Washi Road. When he reached near Mane Wasti at about 7.15 p.m., one Tractor No. MH-10/S-4575 attached with trailer and loaded with sugarcane came from opposite direction in high speed in rash and negligent manner and gave dash to the claimant by coming on wrong side of the road. Due to dash, the claimant fell down and wheel of the tractor and trailer ran over his right leg. The claimant sustained fracture injuries and right leg of the claimant has been amputated. It is the contention of learned Counsel for the appellant-Insurance Company that the head of the tractor was not insured with the appellant-Insurance company and only trolley was insured. While awarding the compensation, the Tribunal has observed that after giving dash by the head of the tractor, the trolley ran over on the legs of the claimant. It shows the involvement of trolley in the said accident. The Tribunal further observed that at the time of accident, the driver of offending tractor was holding learner's licence. On that ground, the Tribunal has passed pay and recovery order. I do not find infirmity in it. In my view, the owner of offending tractor has not challenged the order passed by the Tribunal. Hence, pay and recovery order passed by the Tribunal is proper as accident was caused due to head of the tractor and trolley also and at the time of incident, the trolley was insured with the appellant-Insurance Company.

5. To prove the income, the claimant has examined himself. He has stated that he was cultivating his own land and he has also taken agricultural land of Rangrao Mane for cultivation on contract basis and he was getting annual income of Rs.1 lakh. Due to accidental injuries, he is unable to cultivate land and cannot do routine work and cannot walk without prosthetic leg. Though doctor has given 85% permanent disability, but his functional disability is 100%.

6. While dealing with the issue of income, the Tribunal has observed that the claimant has not filed 7/12 extract on record to prove that he was possessing agricultural land. The claimant might be possessing some agricultural land and also might be supplying milk, but there is no proof of exact income of the claimant. The Tribunal observed that it can not be disputed that applicant was earning from agricultural and milk. On that ground, the Tribunal has considered monthly income of the claimant at Rs.4000/- per month and 75% of it at Rs.3000/- per month. I am unable to understand the observations of the Tribunal. When the Tribunal has considered that the claimant was doing agricultural work as well as he was supplying milk and it has come on record that after the accident, right leg of the claimant has been amputated, he is unable to do agricultural work and supply the milk hence, his functional disability is 100%. The Tribunal should have considered monthly income of the claimant at

Rs.5000/- as stated by the claimant. There is no reason to disbelieve his statement as he was maintaining family of four persons and he was 53 years old. Hence, I am considering monthly income at Rs.5000/-. The Tribunal has not awarded future prospects. As per view of Hon'ble Apex Court in case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1], the claimant is entitled for 10% future prospects. The Tribunal has given Rs.25,000/- for pain and suffering. As the claimant has suffered amputation of leg, I am considering it at Rs.75,000/-. The Tribunal has not granted loss of amenities of life, I am considering it at Rs.1,00,000/-. The Tribunal has not given loss due to disability and disfigurement, I am considering it at Rs.50,000/-. The Tribunal has awarded Rs.10,000/- for special diet, transport and conveyance, I am considering it Rs.50,000/-. The Tribunal has not given amount for prosthetic leg, I am considering it at Rs.10,00,000/-.

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

Particulars		**Amount**
Annual Income (notional income Rs.5,000/- & 100% functional disability)		Rs.60,000/-
Future Prospects – 10% Rs.6,000/- yearly		

1 2017 ACJ 2700 (SC)

Total loss of income Rs. 66,000 x 11		Rs.7,26,000/-
Pain and suffering		Rs.75,000/-
Loss of amenities		Rs.1,00,000/-
Medical expenses		Rs.3,37,000/-
Loss due to disability and disfigurement		Rs.50,000/-
Special diet, transport and conveyance		Rs.50,000/-
Actual loss of income six months (Rs.5,000 x 6) =		Rs.30,000/-
Prosthetic leg		Rs.10,00,000/-
Total Compensation		**Rs.23,68,000/-**
(-) - Awarded by the Tribunal		Rs.7,92,000/-
Total enhanced amount		**Rs.15,76,000/-**

8. It is contention of learned Counsel for the appellant-Insurance Company that the Tribunal has awarded interest at 9% per annum, which is on higher side, I find substance in it. I am considering it at 7.5% per annum.

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

ORDER

(i) First Appeal No. 1190 of 2013 is partly allowed.

(ii) First Appeal (Stamp) No.23192 of 2016 is allowed.

(iii) The claimant is entitled 7.5% interest on compensation amount instead of 9% per annum on compensation amount awarded by the Tribunal.

(iv) The claimant is entitled for enhanced amount of

Rs. 15,76,000/- at the rate of 7.5% per annum from the date of the filing of the Claim Petition till realization of the amount.

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

(vi) The claimant is permitted to withdraw the deposited amount alongwith interest.

(vii) The claimant shall pay deficit Court Fees on enhanced amount, if any, as per Rules.

(viii) The statutory amount in First Appeal No. 1190 of 2013 be transferred to the Tribunal. The parties are at liberty to withdraw it, as per Rules.

(ix) The Respondent-Insurance Company shall recover the enhanced amount along with interest from the owner of the offending vehicle as well as compensation amount awarded by the Tribunal.

(x) R & P be sent back.

(xi) All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)