

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 19 OF 2003

Dr. Ashok Vasantrya Kulkarni, Age 48, Occup.) Appellant
 Superintendent, Rural Hospital and Medical) (Original
 Practitioner,) Claimant)
 R/o. Savitri Road, Mahad, District Raigad)
)

Vide order dated 13.01.2025)
 Appellant deleted and LR brought on Record.)
 1(A). Sunanda Ashok Kulkarni)
 1(B). Madhura Ashok Kulkarni)
 1(C). Manasi Ashok Kulkarni)

versus

- | | | | |
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| 1 | Gurubhaj Singh H. Rajpal, Age Major,
Occup. Business,
R/o. H.No. 110, Jogupalya, Ulsoor, Bangalore |)
)
) | |
| 2 | The Oriental Insurance Company Ltd.,
Branch Office at Solapur. |)
)
) | Respondents
(Original
Opponents) |

Mr. Yogesh Pande, Advocate for the Appellant.

Mr. Mohit Turakhia i/b. S. S. Vidyarthi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY, 2025.

JUDGMENT :

1. This appeal is preferred by the appellant/claimant for enhancement of compensation.

2. It is contention of learned counsel for the appellant that due to accidental injuries the appellant has suffered 70% permanent physical disability. The disability certificate was issued by the Doctor from

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Government Hospital. The said disability certificate is not challenged during the trial by learned counsel for the respondent No.2-Insurance Company. The claimant is cross-examined on disability before the Tribunal. The disability certificate is exhibited by the Tribunal but the Tribunal has awarded lump sum compensation of Rs.35,000/-, which is erroneous. The Tribunal has not applied multiplier while calculating compensation nor awarded future prospects. The medical expenses are not awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that the disability of the claimant has not been proved before the Tribunal as the Doctor who has issued the disability certificate has not been examined. He passed away during pendency of claim petition but the claimant has not proved the said disability certificate by examining other doctor. Learned counsel further submitted that after the accident, the claimant continued in private practise, there is no loss of income to the claimant. The Tribunal has considered all the aspects and has passed well reasoned order. Learned counsel further submitted that no medical bills are produced on record to show the medical expenses incurred by the claimant. Hence, requested to dismiss the appeal.

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

5. While dealing with the issue of disability, the Tribunal has observed that the claimant has stated in his deposition that he has sustained serious injuries on his body part and fracture injuries were caused on his right hand and ribs, therefore, he was not in position to do any work for a period of some months. According to him, he was admitted in hospital at Barshi and from there, he was taken to Pune Hospital, where he was an indoor patient for sometime. According to him, he has spent Rs.85,000/- on his treatment, for which, he has filed medical and hospital receipt on record as per list at Exhibit-24. According to him, he has taken follow-up treatment from Dr. Bhalerao and he has given permanent disability certificate to him, which is at Exhibit-31. In that certificate, 70% permanent disability is opined by Dr. Bhalerao. The Tribunal has further observed that according to the claimant, after the accident, the claimant was not in position to examine his patients properly as well as perform surgery work, therefore, his practise has reduced and it has resulted in causing monetary loss to him. He has stated that at the time accident, he was in government service and he was getting Rs.9500/- per month and he was also carrying private practise, thereby, he was getting Rs.10,000/- per month. The learned Tribunal further observed that the after the accident, the applicant has taken voluntary retirement. The income tax returns filed by the applicant on record, after voluntary retirement from the Government service, would show that the income towards his professional income is near about Rs.1,00,000/- and these returns are filed by him

after a period of one year of the accident. The Tribunal has further observed that the income tax returns show that after taking voluntary retirement from the government service by the claimant, his income has not reduced. Therefore, it is very difficult to accept the version of the claimant in his deposition that his income is reduced and he is required to spend more amount, therefore, his net profit is decreased. The Tribunal further observed that as far as nature of injuries caused to the claimant is concerned, it will be seen that he is mainly relying on permanent disability certified issued by Dr. Bhalerao at Exhibit-31. In the said certificate, Dr. Bhalearo has mentioned about some injuries and has shown percentage of disability caused to the claimant. The said certificate was issued on 31st May 1995 i.e. within 3 ½ months after the accident. Dr. Bhalerao was also in government service and he was Medical Officer at Rural Hospital, Poladpur District, Raigad, therefore, there is very much possibility of claimant having good relations with him.

5.1. The Tribunal has further observed that initially, the applicant was admitted in Jagdale Mama Hospital at Barshi and, thereafter, he was admitted in Pune Hospital but no doctors are examined from these hospital to prove the disability. On that count, the Tribunal has awarded total compensation of Rs.35,000/-. I do not find infirmity in the observations of the Tribunal in respect of the income of the claimant and disability. Admittedly, no evidence is produced on record to prove the disability except certificate issued by Dr. Bhalerao. To prove the disability,

the claimant ought to have examined any other doctor but it has not been done. Without amputation of any body part or causing any serious injuries, Dr. Bhalerao has issued 70% permanent disability certificate to the claimant. It is significant to note that the claimant's wife has also suffered injuries in the said accident. Dr. Bhalerao has also issued disability certificate to her to the extent of 70%. It shows that the disability certificates are issued to the claimant and his wife by Dr. Bhalearo as the claimant and Dr. Bhalearo were in government service. It cannot be denied that the claimant was injured in the accident and had sustained fracture injuries. The claimant was admitted in two hospitals and he was bedridden for couple of days. His income is not reduced after the accident but it appears that after accident, he has taken voluntary retirement from government service, so his permanent source of income has lost. Considering evidence on record, the claimant is entitled for Rs.1,50,000/- lump sum compensation for pain and sufferings, disability, injuries sustained by the claimant, conveyance, medical expenses, loss of enjoyment of life and under other heads and I pass following order :

ORDER

- (1) The appeal is allowed.
- (2) The claimant is entitled for enhanced amount of Rs.1,50,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

- (3) Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from receipt of this order.
 - (4) The claimant is permitted to withdraw the compensation amount along with accrued interest thereon.
 - (5) The claimant shall pay deficit court fees on enhanced amount, if any, as per Rule.
 - (6) Record and Proceedings be sent back to the Tribunal.
6. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)