

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 1668 OF 2007**

Santosh Vasant Athawale

Age – 24, Occu. Education

R/o. Kokale, Tal. Kavathe Mahankal, Dist. Sangli

... Appellant

Versus

1 Sadashiv Tatoba Patil

Age Major, Occu – Owner / driver

R/o. Samtanagar, Kupwad, Tal. Miraj, Dist. Sangli

2 The New India Assurance Co. Ltd.

Opposite ST Stand, Sangli (Policy No.

31153300/13678, valid from 6-5-2000 to 5-5-2001)

Through its Division office at Mata Building,

Ambedkar Road, Sangli

... Respondents

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Mr. Tejpal S. Ingle, Advocate for the Appellant.

Smt. Urmila K. Sanil, Advocate for Respondent No.2/Insurance Company.

CORAM : SHIVKUMAR DIGE, J.**DATED : 13th JUNE, 2025.****ORAL JUDGMENT :**

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

2. It is contention of learned counsel for the appellant /claimant that the claimant was First Year Diploma Engineering student. The claimant has examined Lecturer of his college to prove that he was student of that college. The learned Tribunal has considered monthly income of the claimant @Rs.4,000/- per month, which is on lower side. It should be

Rs.7,000/-p.m. Learned counsel further submitted that due to accidental injuries, the life of the claimant has crippled. All the injuries still have not healed. The claimant has examined seven doctors to prove his disability. The claimant is unable to move from one place to another place. The Tribunal has fixed 50% negligence on the claimant, which is erroneous as the claimant was pillion rider. The Tribunal should not have considered 50% contributory negligence of the claimant. The Tribunal has not awarded compensation under other heads i.e. pain and suffering, future medical treatment, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2 / Insurance company that the accident occurred due to negligence of the appellant /claimant. The rider of two wheeler was not holding valid driving licence. The claimant and rider of two wheeler fell on left side of the road but the injuries sustained by them are on right side of body. It shows suspicion about the case of the claimant. Learned counsel further submitted that the injury certificate has not been issued by the treating doctor and the treating doctor has stated that the claimant has suffered upto 7% disability. Though the claimant has stated that he was engineering student but no record was produced to show that he was taking education in Engineering College. The testimony of the Lecturer cannot be regarded as credible or authentic evidence to establish that the claimant was enrolled as a student

of engineering. The Tribunal has passed well reasoned order no interference is required in it.

4. I have heard both the learned counsel. Perused Judgment and Order passed by Motor Accident Claims Tribunal, Sangli (for short “the Tribunal”). Though the learned counsel for the respondent No.2 disputing about the accident but the Judgment of the Tribunal has not been challenged by the Insurance Company. Moreover, the claimant was pillion rider on the motorcycle hence question of his negligence does not arise. It is claimant’s case that he was studying in first years diploma in Electrical Engineering but due to accidental injury he could not pursue his study and he has suffered 55% physical disability and he could not continue his education and he remained idle at home and injuries are still not healed.

To prove the disability, the claimant has examined seven doctors. PW-3 Dr. Nagesh Naik has stated that the appellant was admitted in his hospital, he examined him. He had fracture of right lower end of femur, patella and right upper end of tibia. The wound was measuring 15cm X 3cm with quadriceps muscles completely torn and bone fragments were palpable. He was discharged on 01.06.2001. There was one major operation done on him and for treatment purpose multiple minor surgeries were done. The muscles were sutured after debridement of partial necrotic muscle and when the wound was with good granulation, plastic surgery in

the form of skin grafting was done. During the treatment period, the blood to the extent of 7 bottles were given to the patient. This witness further stated that he gave the disability certificate to the claimant to the extent of 55%. It is at Exhibit-49. In cross examination he admits that all fractures were fixed in the operation. He admits that all those injuries were badly infected and while discharging the patient except small sinus, the infection was under control.

The claimant has examined PW-4 Dr. Hanmant Khot at Exhibit-51. He has stated that on 14.07.2003, the claimant had come to his hospital. He was having pain and swelling to right knee. Initially, he was treated by Dr. Naik thereafter he came to his hospital after 2 to 2½ years of accident. He was admitted in the hospital and he had done removal of implant and currattys on the claimant. In cross examination, he admitted that the fracture injury was united where there was nailing and he has stated that he did not notice any shortening and inefficiency given by the earlier doctor.

PW-5 Dr. Nandkumar Kumbhar has stated that the claimant had come to his hospital for dressing purpose from 02.06.2002 and he was charging him Rs.20/- per day.

PW-6 Dr. Sunil Patil has stated that the claimant was admitted in his hospital on 17.02.2004. He had come to his hospital with complaint of

swelling, pain around the knee and infection around knee and thigh. He clinically examined him and noticed swelling around right hip and knee joint. There was tenderness and infected sinus discharging pus from the sinus. There was absolutely no movement to knee joint and hip joint. He was admitted in hospital on 17.02.2004 and he was investigated and operated, on 19.02.2004 surgery was done. Nothing elicited in cross examination of this witness.

PW-7 Dr. Bharat Shah has deposed that he did specialization in skin after completing MBBC. In the year 2005 he treated the claimant.

PW-8 Dr. Bhaskar Prani had stated that on 29.03.2005 the claimant was admitted in his hospital. He examined and gave treatment to the claimant. Considering the evidence of these doctor witnesses, it appears that appellant / claimant has taken treatment from various doctors, but his accidental injuries are not completely cured. Due to accidental injuries he cannot move from one place to another place. After accident he confined to his home, due to movement restriction, though the doctor has given 55% physical disability but he has suffered 100% functional disability.

5. As the claimant was college going student, the Tribunal has considered his notional income at Rs.4,000/- per month, it is on lower side. The appellant / claimant was first year diploma engineering student. PW-10 Shivaji Sakhalikar has stated that the claimant was studying in the

engineering college. The claimant was first year diploma engineering student, hence I am considering it at Rs.6,000/- p.m. The Tribunal has not awarded future prospect. As per the view of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)*, the claimant is entitled for 40% future prospectus hence, I am considering it. The Tribunal has not applied multiplier. At the time of accident the claimant was 19 years old hence proper multiplier is 18. The Tribunal has awarded amount for pain and suffering on lower side, I am considering it Rs.1,00,000/-. The Tribunal has not awarded loss of amenities in life, I am considering it Rs.1,00,000/-. The Tribunal has not awarded future medical expenses, I am considering it Rs.1,00,000/-. I am also considering the amount for special diet, attendant and conveyance.

Particulars	Rs.	Entitlement
Yearly Income	Rs.	72,000/-
40% Future Prospects	Rs.	1,00,800/-
Multiplier (18 X 1,00,800)	Rs.	18,14,400/-
Pain & Suffering	Rs.	1,00,000/-
Loss of amenities in life	Rs.	1,00,000/-
Medical Expenses	Rs.	1,00,000/-
Future Medical Expenses	Rs.	25,000/-
Loss of Marriage Prospects	Rs.	1,00,000/-
Attendants	Rs.	25,000/-
Conveyance	Rs.	20,000/-
Special Diet and Nourishment	Rs.	25,000/-

Total	Rs.	23,09,400/-
Less awarded	Rs.	2,55,271/-
Total Enhanced amount	Rs.	20,54,129/-

Thus the claimant is entitled for enhanced compensation of Rs. 20,54,129/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellant / claimant is entitled for enhanced amount of Rs. 20,54,129/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount.
- iii. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
- iv. The appellant/claimant shall deposit the deficit Court fees on enhanced amount as per rule.
- v. The appellant / claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

7. The appeal is disposed of. All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)