

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1343 OF 2005

Rajendra alias Prakash Dadasaheb Darekar
Age : 32 Yrs., Occupation : at present nil,
R/o. Zargadwadi, Songaon, Tal . Baramati, Dist.
Pune

... Appellant

Versus

- 1 Prathamesh A. Atur
Age – 38,
R/o. 957, Ahra Nager, Near Bengal Chemicals
Prabhadevi, Mumbai – 25.
- 2 Manager,
The New India Assurance Company Limited,
Dadar Division, Office Gurudwara building, Second
Floor, Dr. Ambedkar Marg, Dadar (East),
Mumbai -14.

... Respondents

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Mr. Shailesh Chavan i/b. Mr. Milind Deshmukh, Advocates for the Appellant.

Ms. Poonam Mital, Advocate for Respondent No.2 / Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATED : 20th JANUARY, 2025.

ORAL JUDGMENT :

1. By this appeal the appellant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant /claimant that due to accidental injuries claimant has suffered 95% permanent physical disability. The claimant is unable to do any work and he is totally bedridden but the Tribunal has awarded compensation on lower side,

hence requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2 – Insurance company that disability of the claimant was not proved by the doctor. The Tribunal has passed well reasoned order. No interference is required in it hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”). To prove the disability the claimant has examined himself. He has stated that due to accidental injury he has suffered 95% permanent disability and he incurred expenses of Rs.95,000/- towards his medical treatment. In cross examination he admitted that for treatment he was admitted in various hospitals. The claimant has examined PW-2 Dr. Nilesh Bhoite, he has stated that the claimant was admitted in their hospital from 23.12.1997 to 06.04.1998. PW-4 Dr. Gokul has stated that due to accidental injuries the claimant has suffered 95% disability and there is no likelihood of reducing the disability. The disability certificate is at Exhibit-38. The Respondent No.2-Insurance Company has not challenged the disability of the claimant. While awarding compensation, the Tribunal has not considered monthly income of the claimant and the Tribunal has awarded compensation of Rs.2,96,380/-. To prove the income, the claimant has examined PW-3 Sadashiv at Exhibit-33. He has stated that

the claimant was serving with him at the time of accident as a Assistant Manager and getting salary of Rs.4,500/- per month. Since accident the applicant is not working in his hotel. The payment vouchers are at Exhibit- 34 and 35. In cross examination he admits that there were near about 25 employees working in his hotel. He has not filed income tax returns on record. He further admitted that appointment letter was not given to the appellant. He admitted that IT returns of his hotel is submitted to Income tax department and the payment of the employees shown in those returns under head of salary and he can produce those documents showing payment to the appellant.

5. Considering evidence on record, the Tribunal has considered monthly income of the appellant / claimant @ Rs.2,500/-. I am unable to understand the observations of the Tribunal as PW-3 who is owner of the hotel where the appellant was working has categorically stated that the appellant was working in his hotel and after the accident he did not attend his duty. It supports the claimant's case that due to 95% disability, he is unable to do any work, hence I am considering monthly income of the claimant at Rs.3,500/-. The Tribunal has not awarded future prospects and no multiplier is applied. At the time of accident claimant was 30 years old. Hence proper multiplier is 17. As per 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 prospect. The Tribunal has awarded Rs.15,000/- for special diet. Considering the health condition of the claimant, I am considering it Rs. 25,000/-. The Tribunal has awarded Rs.20,000/- as attendant charges, I am considering it at Rs.30,000/- as claimant was admitted in the hospital for five months. The Tribunal has considered medical bills at Rs.1,61,378/-, I am considering the same. The Tribunal has given Rs.10,000/- towards loss of life amenities, I am considering it at Rs. 50,000/-.

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

Particulars	Rs.	Amount
Income	Rs.	3,500/-
40% Future Prospects	Rs.	1,400/-
Total Income (Rs. 3500 + Rs. 1,400)	Rs.	4,900/-
Yearly Income X Multiplier (17)	Rs.	9,99,600/-
95% disability	Rs.	9,49,620/-
Bills	Rs.	1,61,378/-
Special Diet	Rs.	25,000/-
Attendance	Rs.	30,000/-
Traveling Expenses for family	Rs.	30,000/-
Loss of Amenities	Rs.	50,000/-
Pain & suffering	Rs.	50,000/-
Total	Rs.	12,95,998/-
Compensation granted by Tribunal	Rs.	2,96,380/-
Total compensation	Rs.	9,99,618/-

Considering the above calculations, claimant is entitled for enhanced amount of Rs.9,99,618/-.

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

ORDER

- i. The appeal is allowed.
- ii. The Claimant is entitled for enhanced amount of Rs. 9,99,618/- @ 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 6 weeks from the receipt of this order.
- iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The appellant/claimant shall pay the deficit Court fees on enhanced amount if any.
- vi. R & P be sent back to the Tribunal.

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

(SHIVKUMAR DIGE, J.)