

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

FIRST APPEAL NO.53 OF 2018

National Insurance Company Ltd.
Motor TP Hub, MBRO-II
5th Floor, Sterling Cinema Building,
Murzabea Street, Fort, Mumbai-400 001
Through Administrative Officer,
Ms. Jhanvi Naik

...Appellant

Vs.

- 1) Kashish Harun Pathan
Age- 16 years, Occupation- Education
and service- Presently Nil,
Residing of Gothan Galli, Miraj,
District – Sangli

Claimant become major hence mention
of Through Guardian was deleted
as per order on Exh.22.

- 2) Mohammad Rafiqq Talikoti S/o Chandsab
Age- 30 years, Occupation- Owner, Diver of
Truck, Residing of Talikoti, Tippu Nagar,
Taluka- Muddebihal, District- Bijapur.

...Respondents

Mr. Nikhil Mehta (Through V.C.) i/by KMC Legal Venture, for the
Appellant.

Mr. Tejpal S. Ingale, for the Respondent No.1.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 18th MARCH, 2025

PRONOUNCED ON : 22nd APRIL 2025

JUDGMENT:-

. This Appeal is directed against the Judgment and Order
dated 24.02.2017, in Motor Accident Claim Petition No.41 of 2011

(“**claim**”), passed by the learned Chairman, Motor Accident Claims Tribunal, Sangli (“**the Tribunal**”) thereby said claim filed under Section 166 of the Motor Vehicles Act, 1988 (“**the Act**”) was partly allowed with proportionate costs, and Respondent No.2/Original Opponent No.1 and the Appellant/Original Opponent No.2 held jointly and severally liable to pay Respondent No.1/Original Claimant the compensation of Rs.53,34,286/- alongwith interest at the rate of 8% p.a. from the date of filing the claim till realization of the amount.

2) Mr. Mehta, the learned Advocate for the Appellant and Mr. Ingale, the learned Advocate for Respondent No.1, at the outset, stated that the offending vehicle was duly and validly insured with the Appellant. No statutory defence has been available to the Appellant. Therefore, the learned Advocates submitted that the Appeal may be heard finally at the stage of admission, dispensing with necessary notice to Respondent No.2. For this purpose Mr. Ingale submitted the compilation of documents and submitted that said compilation is as per the Tribunal’s record. Hence, taken up for final hearing.

3) The claimant filed the said claim therein he stated that on dated 12.10.2010, one Jamil Shaikh and the claimant were proceeding on a Motorcycle bearing No.MH-10/AB-7204 (“**M/cycle**”) from Miraj to Sangli. The claimant was a pillion. When the M/cycle reached at Gandhi Chowk, Miraj, at about 10:00 p.m., a motor truck bearing

No.MH-09/Q-6464 (“**truck**”) came from Sangli side towards Miraj, driven in a high speed. Therefore, the driver of the truck lost control and the truck went to the wrong side of the road. Jamil took his M/cycle to the extreme left side of the road. The truck, however, dashed the M/cycle. As a result, the claimant fell down on the road and the left front wheel of the truck ran over and crushed the left hand of the claimant. The claimant was medically treated at Shaikh Orthopedic Hospital at *Sangli*. However, the accidental injury led to amputation of the injured hand. At the time of the accident, the claimant was studying in Standard IX, in the Miraj High School, at Miraj. Besides, he was doing a part time job in a mobile shop, at Miraj thereby he was getting income of Rs.200/- per day. The claimant has been unable to work and earn as before. Therefore, the claimant prayed to award total compensation of Rs.59,55,000/-.

4) Respondent No.2 and the Appellant filed their Written Statements (Exhs.19 & 15 respectively). They denied that the accident occurred due to rash and negligent driving of the truck. They denied that the claimant was working and earning as above. Respondent No.2 contended that, in fact, Jamil Shaikh was riding the M/cycle in a rash and negligent manner. Therefore, the M/cycle came on wrong side and dashed the truck. As such, only Jamil Shaikh was responsible for the accident. The Appellant also contended that the accident

occurred due to rash and negligent riding of the M/cycle by Jamil Shaikh, therefore, this is a case of composite negligence. However, the rider, owner and insurer of the M/cycle were not made party to the claim. As such, the claim was suffering from non-joinder of the necessary parties. Therefore, the Appellant prayed to dismiss the claim with costs.

5) Hence, the Tribunal framed the issues. In turn, the claimant adduced his evidence on Affidavit (CW1/Exh.24) and produced on record the copies of F.I.R. (Exh.27), spot panchnama (Exh.28), payment receipt (Exh.35), receipt of laboratory Charges Rs.510 (Exh.36) and Medical Bills (Exhs.63 & 64). He examined CW2-Dr.Samir Salil Shaikh (Exh.34), to prove the injury certificate, CW3-Dr.Smita Gavali (Exh.38), to prove the disability, CW4-Dr.Kannabiran Mudliyar (Exh.42), to establish the necessity, use and cost of left upper prosthesis and CW5-Ansar Rashid Kazi (Exh. 70) to prove the part time job and the income. Respondent No.2 and the Appellant did not adduce any evidence.

6) After considering the oral and documentary evidence presented by the claimant, the Tribunal noted that, the claimant affirmed that the offending truck was coming from Sangli towards Miraj, i.e., from west to east. Miraj Sangli Road runs east-west. The claimant was proceeding from east to west. Sangli Miraj Road was

heaving tar width of 50 feet. Said fact is established by the Spot Panchnama (Exh.28) The correct side of the truck was Northern plank of the said road. However, the truck went to the extreme right side of the road and halted at the footpath. Therefore, the Tribunal held that the truck went towards the wrong side and dashed the M/cycle. As recorded in the Spot Panchnama, there were break marks on the road running south-north in direction. From this fact the Tribunal inferred that the truck went across Sangli-Miraj road, therefore, the said break marks appeared on south-north direction. But even after applying the breaks, the truck did not stop and, it went towards the footpath on southern side and dashed the M/cycle. The evidence by the claimant that, on seeing the truck coming on wrong side Jamil had taken his M/cycle to the extreme left side of the road, was not denied by the opponents. The scene of the offence shown on the southern edge of the road. Therefore, the Tribunal held that, the truck went towards wrong side of the road and then dashed the M/cycle. As such, the Tribunal held that the accident occurred due to the rash and negligent driving of the truck. The Tribunal observed that Respondent No.2, driver of the truck, was an eye witness to the accident. He was expected to enter into the witness box to explain how and in what manner the accident occurred. But he chose to remain out of the witness box. Therefore an adverse inference can be

drawn that he was at fault.

6.1) The aforesaid finding of the Tribunal is in conformity with the police papers referred in the evidence by the claimant. Therefore, I am in agreement with the said finding.

7) The evidence of the claimant and CW2-Dr. Samir Shaikh coupled with the injury certificate (Exh.29) clearly established that as the wheel of the truck ran over his left upper limb, his left fore-arm and elbow joint was completely crushed and ultimately, it was amputated above elbow.

8) CW2-Dr.Samir Shaikh has been running an orthopedic hospital in the name and styled as “Shaikh Orthopaedic Hospital” at Miraj. The evidence of the claimant and CW2 indicates that on dated 12.10.2010, claimant was admitted in the hospital of CW2. The claimant was discharged from the hospital on dated 22.10.2010. CW2 operated on the left hand of the claimant and charged him Rs.60,000/- for the operation and medical treatment. He received the said amount and issued the receipt (Exh.35). CW2 proved the receipt of the laboratory charges of Rs.510 (Exh.36). CW2 deposed that the claimant had purchased medicines from other medical stores. This evidence is consistent with the evidence of the claimant and it is supported with the pharmacy bills for Rs.5910/- and Rs.1066/- (Exhs. 63 & 64 respectively). Looking at the injury, the said expenses were

reasonable. There is nothing to doubt the said bills. Therefore, the claimant is entitled for reimbursement of entire medical expenses totalling to Rs.67,486/-.

9) The evidence of the claimant is that the left hand amputation caused him hundred percent permanent functional disability. In this regard, CW2 is deposed that he examined the claimant to assess his disability. Accordingly, he issued the Disability Certificate (Exh.65). This Certificate mentions that the claimant has suffered 70% permanent partial disability with reference to the left hand. However, CW2 has clarified that said disability is 30% to 35 % with reference to the whole body.

9.1) CW4-Dr.Smita Gavali deposed that the medical board consisting of Dr.Deepak Tambe, the Civil Surgeon and R.M.O., examined the claimant on dated 28.11.2011 and assessed the disability to the extent of 80%. This evidence is supported with the Disability Certificate (Exh.41) issued by the Medical Board. CW4 identified the signatures of the Civil Surgeon, Dr.Tambe and the R.M.O. appearing on the Disability Certificate (Exh.41). This oral and documentary evidence has not been denied by the opponents. Additionally, the Tribunal considered the list of injuries deemed to result in permanent total disablement and partial disablement, as stated in part II of Schedule-I of the Employees' Compensation Act, 1923. Then the

Tribunal noted that the disability is 80% where an amputation is below the shoulder with stump less than 20.32 cms., from tip of acromion. In the case in hand, the amputation of the claimant is below the shoulder with stump less than 20.32 cms. In view thereof the Tribunal held that the claimant's disability is to the extent of 80%. Considering the evidence as a whole, I am in agreement with the said conclusion by the Tribunal.

10) The claimant's evidence is that, at the time of the accident, he was aged about 16 years. He was studying in Standard IX. He was working as a salesman in the mobile shop of CW5-Mr. Ansar Kazi thereby he was getting monthly salary of Rs.6,000/-. The evidence of CW5-Ansar Rashid Kazi (Exh.70) is that since 2008 he has been running a mobile shop in the name and styled as "M/s. Super Star Mobile Shoppe", at station road, Miraj. He has obtained the Shop Act Licence No.12346/44/80, dated 30.05.2008 (Exh 72). He deposed that from 1st July 2010, the claimant was serving as assistant in his shop. The claimant used to repair handsets and help to run the shop. CW5 deposed that he used to pay the claimant Rs.200/- per day. To substantiate this evidence, CW5 referred the Certificate (Exh71) issued by him. In the cross-examination, CW5 admitted that his shop is registered under the Bombay Shops & Establishments Act. He does not maintain a muster roll and pay register. The claimant demanded

him the Certificate. Accordingly, he issued the Certificate. However, except bare words of CW5 there was no documentary evidence to show that the claimant was working as assistant in the mobile shop. The claimant was aged 16 years and studying in Standard IX. Therefore, the Tribunal held that the claimant may not be working for gain but he had potential to work.

11) The Tribunal further noted that a clerk in the Government Department was earning Rs.15,000/- per month. After the accident, the claimant has passed H.S.S.C. with 51% marks. He could have gotten a job as a clerk in the Government service. Therefore, the Tribunal considered the monthly income of the claimant as Rs.15,000/-. Looking at the evidence as a whole, the aforesaid finding is justifiable. Mr. Mehata, the learned Advocate for the Appellant has not taken any serious exception to that. Therefore, I am in agreement with the conclusion of the Tribunal that the monthly income of the claimant can be taken as Rs.15,000/-. In accordance with the decision in *National Insurance Co. Ltd. vs. Pranay Sethi and others*.¹ and *Sarla Verma and others v/s. Delhi Transport Corporation and another*², 40% of the notional monthly income should be added towards the future prospects of the claimant, but the Tribunal added 50%, which is not correct. As such, the actual monthly income comes to

1. (2017) 4 ACJ 2700 (SC)

2. 2009 ACJ 1298 (SC)

Rs.21,000/- per month. Considering the 80% disability, the Tribunal held that said disability resulted in the loss of 80% future income/income capacity of the claimant. This conclusion is justifiable looking at the amputation. Therefore, the actual monthly loss of the income was Rs.16,800/- (21,000 – 4,200/-), which was yearly Rs.2,01,600/-. The claimant was aged 16 years when he met with the accident. Hence, the applicable multiplier is '18'. Thus, the amount of compensation towards the loss of the future income would be Rs.36,28,800/-.

12) The claimant's evidence is that, doctors advised him to use artificial limb for cosmetic purpose and also for carrying out daily activities, as far as possible. He had purchased an artificial limb costing Rs.8,000/- and used it, but it had worn out by December 2012. Then he purchased another such limb for Rs.16,500/- from 'Handicapped Rehabilitation Centre Pune'. The claimant stated that a costly modern artificial limb is assembled with electronic features. He will have to purchase such limb for fifteen times, at least, which would cost him Rs.15,00,000/-.

13) In support of the aforesaid evidence, CW4-Dr. Mudliyar deposed that he obtained a Degree in production and technique of Prosthetics, from Madras University. He has been serving as an advisor in Artificial Limb Centre, Pune. He has been preparing

prosthesis and fitting it. He deposed that in the year 2010 the claimant had purchased an upper left prosthesis for Rs.8000/- from his institute. Accordingly, he had issued him a receipt. The durability of the said prosthesis was two years. He deposes that the claimant again visited at his centre in the year 2013. At that time he prepared another left upper prosthesis and fitted at the request of the claimant. This prosthetic was worth Rs.16,500/-. The claimant paid that price and he issued him the receipt alongwith warranty card. CW4 deposed that, if such a modern prosthesis is to be fitted to the claimant, then it would cost him minimum at Rs.29 lacs. On fitting such a prosthesis, the claimant would be able to work as if he has natural such limb. Said prosthesis is imported from Germany and it lasts longer. However, the gloves of said modern prosthesis should be changed every two years. Said gloves costs Rs.19,500/-. Similarly, the battery and wires of said prosthesis should be changed after some duration. PW4 deposes that the said Prosthesis is required to be imported and it can be used for long period but its battery and wire are required to be changed at some intervals.

13.1) CW4 deposed that, he had issued to the claimant the quotation (Exh.78) for modern artificial limb. On fitting such limb, the claimant would be able to work with the thumb and first two fingers and rotate the wrist. He deposed that said prosthesis should

be imported, therefore, it is more costly. Said prosthesis can be used for many years, however, its battery and wires should be changed. The quotation (Exh.78) issued by CW4 mentions that a semi automatic prosthesis with battery costs Rs.9,13,800/-. 50% of the amount is required to be paid in advance and remaining 50% amount is required to be paid at the time of trial.

13.2) The aforesaid oral and documentary evidence did not meet challenge in the cross-examination. Looking at the evidence as a whole, it is acceptable that the claimant needs the prosthesis and it can fit on his body. Therefore, the amount of Rs.9,13,800/- awarded for the prosthesis, is justifiable.

14) Looking at the injury, the amputation and its effect on the claimant's life, the compensation awarded under various other heads cannot be held as unreasonable and exorbitant. Said heads and the compensation amount are as under :

Attendant charges	: Rs.5,000/-
Conveyance	: Rs.5,000/-
Pain & agonies	: Rs.1,50,000/-
Loss of amenities etc.	: Rs.1,00,000/-
Marriage prospects	: Rs.2,00,000/-

15) Conspectus of the above discussion is that, the Tribunal erred in adding 50% of the actual yearly income towards the future prospects, which should be 40%. The rate of the interest 8% is little

on higher side, which, in the facts, according to me should be 7.5% per annum. Therefore, the impugned judgment and order warranted an interference only to that extent to modify the awards. As a result, the Appeal partly succeeds.

16) Hence, following Order is passed :-

- (i) First Appeal is partly allowed with proportionate costs.
- (ii) The impugned Judgment and Order dated 24.02.2017, in Motor Accident Claim Petition No.41 of 2011, passed by the learned Chairman, Motor Accident Claims Tribunal, Sangli is modified.
- (iii) The Appellant- Insurance Company and Respondent No.2 shall pay the compensation of **Rs.50,70,086/-** (inclusive of NFL amount) together with interest thereon at the rate of 7.5 % per annum from the date of the claim petition till realisation of the amount.
- (iv) If the Appellant has already deposited the amount as directed by the Tribunal, then the compensation amount quantified in this judgment shall be immediately paid to Respondent No.1.
- (v) The balance amount, if any, alongwith proportionate interest shall be refunded to the Appellant - Insurance Company.
- (vi) Statutory deposit, if any, shall be transferred to the Tribunal and it be paid in accordance with law.

(vii) Record and Proceedings of the Tribunal shall be immediately sent back.

17) The Appeal stands disposed of in above terms.

(SHYAM C. CHANDAK, J.)