IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2438 OF 2011

Babaso Janu Patil
Age 34 years, Occupation : Business
Residing at C. S. No. 1817-B,
Nigiwali Chowk, Near Panyacha
Khajina, Mangalwar Peth, Kolhapur. ....**Appellant**

Versus

1. Narayan Laxman Bhopale,
Age Adult, Occupation : Truck
Owner, R/o Kumbhari, Taluka
South Solapur, Dist. Solapur.

2. National Insurance Co. Ltd.
Office Cosmos Commercial
Complex, 205-E, Station Road,
New Shahupuri, Kolhapur ....**Respondent**

Mr.Rahul Motkari i/b Mr. Sandeep Waghmare, Advocate for the Appellant.
Smt. Urmila Sanil, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 17th JUNE, 2025.

ORAL JUDGMENT. :

1. By this Appeal, Appellant is seeking enhancement of compensation.

2. It is contention of the learned counsel for the Appellant that at the time of accident, the Appellant was 31 years old. He was running leth machine workshop, namely Suyog Engineer at Pune. Due to accidental injuries, he has suffered injury to his head and other parts of body, and he has suffered 36% permanent physical disability. After the accident, he is unable to do his business but the Tribunal has considered his notional monthly income at Rs.3,000/- per month, which is on lower side. The Appellant was paying income tax and in the said income tax returns, his income was shown as Rs.10,000/- per month. The compensation awarded by the Tribunal under other head is on lower side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent – Insurance Company, that no documentary evidence is produced on record to prove the income of the Appellant. The income tax returns are not filed on record. The Appellant has not produced evidence in respect of workshop. The Tribunal has rightly considered notional monthly income of the Appellant. The Tribunal has passed well reason order and adequate compensation is awarded to the Appellant. No interference is required and requested to dismiss the

Appeal.

4. I have heard both learned counsel, perused the Judgment and Order passed by Motor Accident Tribunal, Kolhapur (for short the 'Tribunal'). Admittedly, due to accidental injuries, the Appellant has suffered 25% permanent physical disability. To prove the disability, the Appellant has examined PW-2 Dr. Sopan Rane. He has stated that the Appellant was admitted in the hospital for 120 days and during his admission, he had undergone several surgeries. This witness issued disability certificate showing disability at 36.87%, disability certificate is at Exhibit – 34. Nothing elicited in cross-examination of this witness. The Appellant has examined PW-3, Dr. Santosh Prabhu, he has stated that the Appellant was admitted in his hospital and he treated him.

5. It appears from record that the Appellant has suffered 1) head injuries with intracerebral contusion with fracture tibia, fibula, patella right leg and dilat haemaphorax right side 2) Right femur - medial side, 15 X 11 cm muscle deep 3) Right knee open fracture, patella with loss of skin. While dealing with the issue of disability the Tribunal has randomly considered disability at 25%. I am unable to understand about the observations of the Tribunal considering the

disability at 25% randomly and without given any reason. In my view, PW-2, who has treated the Appellant has specifically stated about the treatment given to the Appellant by him. The Appellant was admitted in his hospital for 120 days. The Tribunal should have given weightage to the evidence of PW-2, who is medical expert. Hence, I am considering the physical disability of the Appellant at 36.87%.

6. To prove the income, the Appellant has examined himself. He has stated that he was running workshop, and he was getting Rs. 10,000/- per month and he was filing income tax returns. While dealing with issue of income of the Appellant, the Tribunal has observed that no evidence is produced on record, i.e. the shop Act license and bank statement, on the basis of minimum wages, the Tribunal has considered Rs.3,000/- per month as income of the Appellant.

7. In my view, the Appellant has stated on oath that he was running the workshop. Though, original shop establishment license was not produced on record, but xerox copies of income tax returns along with xerox copy of shop establishment license is produced on record. It shows that the Appellant was running the workshop.

Considering these facts, I am considering notional monthly income of the Appellant at Rs.6,000/-.

8. Tribunal has not awarded future prospects. The Appellant has suffered more than 36% physical disability. Hence, is entitled for 40% future prospects and proper multiplier is 17. The Tribunal has not awarded future medical expenses. It has come on record that after the operation the Appellant was again admitted in hospital. Hence, 50,000/- is given for future medical expenses. The Tribunal has awarded Rs.2500/- for loss of income. The Appellant was admitted in hospital for 120 days. Considering the above calculations, the Appellant is entitled for following compensation.

Sr.No.	**Heads**	**Considered by this Court**	**Granted by the Tribunal**
1.	Loss of earning due to disability : Income : 6,000/- p.m. Future prospects : 2,400/- (40% of 6,000/- p.m.) Disability : 36.87% (MACT considered 25%) Multiplier : 17 Rs. 8,400 (Income + Future prospects) X 12 (months) X 17 (multiplier) X 36.87 % (disability)	6,31,804.32/-	1,53,000/

2.	Loss of earning for 4 ½ months during hospitalization		13,500/-
3.	Medical expenses	2,68,000/-	2,68,000/-
4.	Future medical expenses	50,000/-	Denied
5.	Loss of conveyance	25,000/-	2,500/-
6.	Special diet	25,000/-	2,500/-
7.	Pain and suffering	1,00,000/-	5,000/-
8.	Loss of amenities and discomforts	2,00,000/-	1,05,500/-
9.	**TOTAL**	13,38,304.32/-	5,50,000/-
10	**Enhance amount**	7,88,304.32/-	

9. The Tribunal has awarded Rs. 5,50,000/- if this amount is deducted from the amount considered by this Court Rs. 13,38,304.32/-, it comes to Rs. 7,88,304.32/-. The Appellant / Claimant is entitled for this amount.

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

ORDER

(i) The Appeal is allowed.

(ii) The Appellant/Claimant is entitled for enhanced amount of Rs. 7,88,304.32 @ 7.5% interest per annum from the date of filing claim petition till realization of the amount.

(iii) The Respondent – Insurance Company shall deposit the enhanced amount alongwith interest within six weeks after receipt of the order.

(iv) The Appellant/Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

(v) The Appellant / Claimant shall pay deficit Court fees on enhanced amount, as per Rules, if any.

(vi) Record and Proceedings be sent back to the Tribunal.

(vii) The Appeal is allowed in the aforesaid terms, the appeal is allowed and disposed of.

11. All pending Applications, if any, also stand disposed of.

(SHIVKUMAR DIGE, J.)

GAYATRI RAJENDRA SHIMPI Digitally signed by GAYATRI RAJENDRA SHIMPI Date: 2025.07.11 11:00:45 +0530