

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

FIRST APPEAL NO.829 OF 2023

Chandrkant Savla More	}	
Age-46 years, Occupation : Unemployed	}	
R/at : Kaloshi, Taluka : Jawali, Satara	}	...Appellant

Versus

1. Choramandalam MS General Insurance	}	
Co. Ltd.	}	
3 rd Floor, Wellesly Court, CTS No.15B,	}	
Dr.Ambedkar Road, Camp, Pune-411 001	}	

2. Dilip Baban Sherkar	}	
(Owner of the offending vehicle)	}	
Age-40 years, Occ: Nil,	}	
R/at 1719 Sherkar Mala, Rahimpur,	}	
Taluka : Koregaon, Satara	}	...Respondents

Ms.Raufa Shaikh a/w Mr.Yuvraj Narvankar, for the Appellant.
Mr.Rajesh Kanojia i/b Res Juris, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JUNE 2025

ORAL JUDGMENT :-

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

NILAM
SANTOSH
KAMBLE

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2. It is contention of the learned counsel for the Appellant that, due to accidental injuries the Appellant has suffered 80% permanent physical disability. The Appellant was working as a waiter in hotel and was earning Rs.9,000/- per month. But the Tribunal has considered it at Rs.6,000/- per month, which is on lower side. The learned counsel further submitted that, the Tribunal has not awarded cost of artificial limb and its maintenance, it be awarded. The Tribunal has awarded attendance charges and special charges at Rs.15,000/- it is on lower side. The Appellant was admitted for three months, hence, compensation should be on higher side. The learned counsel further submitted that, the travel expenses is awarded on lower side. The Tribunal has not awarded compensation for pain and suffering, loss of amenities, loss of love and affection and conveyance. Hence, requested to allow the Appeal.

3. The learned counsel for the Appellant relied on :

- (i) Mohammed Sabeer @ Sabeer Hussain V/s. Regional Manager, UP State Transport Corporation (2022-SCC-Online-SC-1701)*
- (ii) Anant Son of Siddeshwar Dukre V/s. Pratap Son of Zhampannappa Lamzane & Anr (2018-9-SCC-450).*

4. It is contention of learned counsel for the Respondent-Insurance Company that, no evidence is produced on record to prove the income of the Appellant. The Tribunal has considered income of the Appellant on notional basis which is correct. The learned counsel further submitted that the Appellant has not claimed any compensation for artificial limb. He has not produced any evidence on record to show that, he was using artificial limb. If there is no specific contention of compensation for artificial limb, it cannot be granted. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

6. To prove his income, the Claimant has examined himself at Exhibit-18. He has stated that, at the time of the accident he was working as waiter at hotel Pranjali, Satara. He was getting salary of Rs.9,000/- per month. The Salary Certificate is at Exhibit-4/16. He further stated that, due to

accidental injuries his right leg has been amputated twice. For first time, it was amputated below knee and thereafter due to infection, it was cut from thigh. Nothing elicited in cross-examination of this witness to disbelieve evidence of the income. To prove his income, the Claimant has examined PW-2 Madan Pawar, owner of the hotel Pranjali. He has stated that, the Appellant was working as a waiter in his hotel from year 2012 till date of the accident and he was giving him Rs.9,000/- as per month salary. He further stated that, after the accident the claimant has not reported on duty. In cross-examination, he admitted that he has not produced shop license of hotel Pranjali and he has not produced any documentary evidence to show that he was giving Rs.9,000/- as salary to the Appellant-Claimant. He further admitted that, Exhibit-40 is computerized letter head of his hotel. Considering evidence on record the Tribunal has considered notional monthly income of the Appellant at Rs.6,000/- per month. I am unable to understand the observations of the Tribunal, as the Appellant was working as waiter. He was maintaining family of four members. Due to

accidental injuries he has lost his job. He has no source of income. His livelihood was dependent on his work but due to amputation of his leg, he is unable to do work. There is no reason to disbelieve his evidence, and evidence of his employer that he was getting Rs.9,000/- per month, as he was maintaining the family of four persons. Hence, I am considering salary of the Appellant at Rs.9,000/- per month.

7. The Appellant-Claimant is seeking compensation for artificial limb. It is contention of the learned counsel for the Respondent-Insurance Company that, no such prayer was made before the Trial Court nor Appellant used the artificial limb. Hence, it cannot be granted.

8. In my view, due to accidental injuries right leg of the Appellant is amputated twice. For first time, it was amputated below knee, thereafter due to infection, it was amputated from thigh. He must have suffered unbearable pain. Though the Appellant has not claimed compensation of artificial limb in the Claim Petition filed before the Tribunal, it cannot be a ground to deny him for what he is entitled. Pain suffered by him while two

amputations cannot be counted in money and value of compensation amount cannot replace utility of his amputated leg. The Compensation is a form which can solace to him to live his life without monetary problem. Compensation helps bridge the income gap created by the disability. Not claiming compensation by him in Claim Petition is mistake of advocate, and for it the Claimant cannot be suffered as he was not educated person he was working as waiter, he has lost his leg, he has lost his job, due to accidental injury not only the Claimant but his family has also suffered because he was Karta of his family. Hence, I am considering Rs.12,00,000/- for artificial limb. The Tribunal has not awarded compensation for pain and suffering, I am considering it at Rs.2 lakhs. For loss of amenities of life, I am considering it at Rs.2 lakhs, I am considering Rs.25,000/- for attendant charges, Rs.50,000/- for future medical expenses, Rs.25,000/- for special diet, Rs.50,000/- for loss of enjoyment of life. Considering these calculations the Claimant is entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.9,000/-
Loss of earning due to disability (50% income x 12 months) (4500 x 12)	Rs.54,000/-
(+) Future Prospects (25%)	Rs.67,500/-
Multiplier 14 Rs.67,500 x 14	Rs.9,45,000/-
Loss of earning during time under treatment (Rs.9000 X 3 months)	Rs.27,000/-
Cost of Artificial Limb	Rs.12,00,000/-
Medical Expenses	Rs.6,385/-
Future Medical Expenses	Rs.50,000/-
Attendant Charges	Rs.25,000/-
Special Diet	Rs.25,000/-
Travel Expenses (Jeep)	Rs.27,015/-
Total loss of Income	Rs.23,05,400/-
Pain and Suffering	Rs.2,00,000/-
Loss of amenities of Life	Rs.2,00,000/-
Loss of enjoyment	Rs.50,000/-
Loss of Conveyance due to disability and disfigurement	Rs.2,00,000/-
Total Compensation Payable	Rs.29,55,400/-
Tribunal Awarded	Rs.7,21,390/-
Claimant Entitled	Rs.22,34,010/-

9. The Claimant is entitled for Rs.29,55,400/-, if this amount deducts from the amount considered by the Tribunal i.e. Rs.7,21,390/-, it comes to Rs.22,34,010/-. The Claimant is

entitled for Rs.22,34,010/-.

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant is entitled for enhanced amount Rs.22,34,010/- @ 7.5% per annum from date of the filing of the Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.
- (iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.
- (v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vi) Record and Proceedings be sent back to the Tribunal.
- (vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)