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

**FIRST APPEAL NO.1392 OF 2024
WITH
INTERIM APPLICATION NO.11902 OF 2024
IN
FIRST APPEAL NO.1392 OF 2024**

The Manager,
Future Generali India
Assurance Co. Ltd.
104 and 105, 1st Floor,
R.B. Mehta Road,
Near Ghatkopar (E),
Mumbai – 400 075

...Appellant/Applicant

vs.

1. Salim Ahmed Shaikh
Age 29 years,
Residing at Cen No.10
Jan Seva Society,
Near Ahale Hadis Masjid,
Ganesh Nagar, Kandivali (W)
Mumbai 400 067

...

2. Ramchandrarao Durgarao Akula
Residing at Bldg. No.124/3612,
Kannamwar Nagar No.02,
Vikhroli (East)
Mumbai 400 083

...Respondents

**WITH
INTERIM APPLICATION NO.1441 OF 2025
IN
FIRST APPEAL NO.1392 OF 2024**

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Age 29 years,

Residing at Cen No.10
Jan Seva Society,
Near Ahale Hadis Masjid,
Ganesh Nagar, Kandivali (W)
Mumbai 400 067

...Applicant

In the matter between

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...Respondents

Mr. Rajesh Kanojia i/b Res Juris for the Appellant and Applicant in
IA No.11902/2024.

Mr. T. J. Mendon for the Respondent No.1 in Appeal and for the
Applicant in IA No.1441/2025.

CORAM : SHYAM C. CHANDAK, J.

DATED : 12th March, 2025

JUDGMENT :

. Present Appeal is directed against the Judgment and Order dated 26.02.2024, in M.A.C.P. No.407 of 2021, passed by the learned Member, Motor Accident Claims Tribunal, Mumbai thereby said claim filed under Section 166 of the Motor Vehicles Act, 1998 (“the Act”) has been partly allowed with proportionate costs and the Appellant/Insurer and Respondent No.2/Opposite party have been directed to jointly or severally pay the Respondent No.1/Claimant a compensation of Rs.8,44,793/- alongwith interest @ 7% p.a.

2) Mr. Kanojia, the learned Advocate for Appellant, at the outset, stated that no statutory defence was available to the Appellant in so far as the policy of insurance and risk cover are concerned. Therefore, both the learned Advocates submitted that the Appeal be heard finally at the admission stage, dispensing with notice to the Respondent No.2, who otherwise was *ex-parte* before the Tribunal. Hence, heard the learned Advocates for the parties, finally. Perused the record.

3) Facts in brief are that on dated 11.10.2020, at about 14:00 hours, the claimant was riding his motor cycle (“**M/cycle**”) and proceeding towards *Kandivali* direction. When he reached near Two Tanks chowk, the offending Motor Taxi bearing No.MH-03-AT-3362 (“**the taxi**”) came from opposite side driven in a rash and negligent

manner and, gave a forcible dash to the M/cycle. As a result the claimant fell down and sustained grievous injuries. Therefore, the claimant filed the claim and prayed to award a compensation of Rs.15,00,000/- along with interest at the rate of 12% per annum, against the Appellant and the Respondent No.2.

4) The Appellant filed the written statement and resisted the claim. The Appellant admitted that the taxi was duly covered under the policy of Insurance issued by the Appellant. However, the Appellant contended that there was no negligence on the part of driver of the taxi; that, the accident occurred due to contributory negligence; that, the claim application is vague and incomplete in material particulars. For these and other reasons the Appellant prayed to dismiss the claim.

5) The claimant adduced his evidence on Affidavit (AW1/Exh.20). He examined Dr.Rajesh Raman Desai (AW2/Exh.27) to prove his disability and Nishad Ahmed Chaudhary (AW3/Exh.31) to prove his occupation and the income. Besides, the claimant relied upon FIR Exh.21, spot panchnama Exh.22, Insurance policy Exh.23, Discharge Summary Exh.24, deposit receipts Exh.26, Disability Certificate Exh.28, Registration Certificate of National Timber and Plywood Exh.32 and employment-cum-salary certificate Exh.34. No evidence

was presented in the rebuttal by the Appellant.

6) Mr. Kanojia, the learned Advocate vehemently submitted that, the evidence as to the rash and negligent driving of the taxi is not sufficient. The evidence relating to the claimant's occupation and income is not adequate and it is also suffering from inconsistencies. Hence, said evidence is not reliable. Therefore, the Tribunal declined to hold the claimant's occupation as 'delivery agent' and monthly income as Rs.24,00/-. However, the Tribunal conclude that the claimant's notional monthly income was Rs.15,000/-, which is not correct. He submitted that, the claimant also failed to prove the disability. Hence, the impugned Judgment and Order be set aside.

7) In contrast, Mr. Mendon, the learned Advocate submitted there is sufficient evidence by the claimant which has proved that, the accident occurred due to rash and negligent driving of the taxi; and that, it caused grievous injury and disability to the claimant. He submitted that, there is sufficient and reliable evidence to accept the occupation and income of the claimant as above, yet, the Tribunal rejected it without just reason and awarded the compensation on lower side by holding the notional monthly income as Rs.15,000/- only. In the alternative, he submitted that there are no infirmities in the impugned Judgment to reduce the compensation. Hence, he

submitted that, the Appeal be dismissed.

8) The evidence of the claimant is that at the relevant time and place, the taxi came from opposite direction, driven in a high speed, without taking any precaution and gave forcible dash to his M/cycle. This evidence is corroborated with the FIR, which was promptly filed by the claimant himself within 3 to 4 hours after the accident. The spot panchnama clearly indicates that the road where the accident occurred was 40 ft. in breadth. As such, it is safe to infer that the taxi could have easily passed over the M/cycle without obstruction. However, it dashed against the M/cycle. This indicates that the driver of the taxi did not keep proper look out at the road. Driving a four wheelers in such a manner is dangerous. This danger was ignored by the taxi driver and, it ultimately resulted in the accident. Therefore, the finding recorded by the Tribunal that the accident occurred due to rash and negligent driving of the taxi, is correct and need not be interfered with.

9) The evidence of the claimant coupled with the evidence of AW2 Dr. Desai, Discharge summary Exh.24 and the Disability Certificate Exh.28 clearly show that the claimant had sustained fracture of the neck of right taller bone with right ankle dislocation. Said fracture was fixed with cannulated cancellous screws through certain surgical

procedure, performed at J. J. Hospital. The claimant was inpatient for 7 days for the said medical treatment. Thus, it is apparent that the injury was grievous and it took considerable time to heal and recover.

10) AW2 Dr. Desai deposed that he examined the claimant on dated 01.05.2023 to assess his disability. He Perused the relevant medical papers and noted the injury as stated above. He took fresh x-ray of the injury. He deposed that, as per the x-ray, the fracture was united but showed changes of 'A Vascular Necrosis' (AVN), therefore, the area of the particular bone was dying. As per his clinical examination, the claimant has suffered painful restriction of his right ankle movement, resulting in difficulty in walking and climbing stairs, inability to run and squat. He deposed that the claimant has suffered chronic swelling of his right ankle and weakness in the right leg muscles. In view thereof, he assessed the permanent partial disability at 51% with reference to the right lower limb. Accordingly he issued the said Disability Certificate. He deposed that the future surgery to remove the implant will cost the claimant approximately Rs.80,000. This evidence did not see sufficient challenge in the cross-examination.

11) In view of the aforesaid evidence of the claimant and AW2-Dr. Desai, the Tribunal awarded Rs.8,44,793/-. The break up of the

compensation is as under :-

Sr.No.	Particulars	Amount
1	Medicine expenses	Rs.17,193/-
2	Special Diet & Conveyance	Rs.20,000/-
3	Loss of Income	Rs.90,000/-
4	Loss due to disability	Rs.6,42,600/-
5	Pain and suffering	Rs.50,000/-
6	Future medical expenses	Rs.25,000/-
	Total	Rs.8,44,793/-

12) The claimant was present before this Court on 12.02.2025 and he produced his latest x-ray report with x-ray plate (Exh.–“X”), through Mr. Mendon, the learned Advocate. The said report clearly noted that the claimant had suffered the said fracture. The implant is present at the fractured site. The claimant has been advised to plan for the implant removal. The claimant stated that still he has pain on account of the fracture. At present the claimant is aged 33 years. As such, he has to tolerate the disability for a long long period.

13) Considering the aforesaid evidence of the claimant and AW2-Dr.Desai, the award under the heads ‘medical expenses’, ‘Special Diet & Conveyance’ and ‘Pain and suffering’ is reasonable. Compared to the medical expenses awarded, the award of Rs.25,000/- towards ‘Future medical expenses’ is not on higher side. After the future

surgery, the claimant will have to incur on special diet to recover early. Therefore, said award of Rs.25,000/- is proper.

14) The claimant's evidence is that at the time of the accident he was gainfully employed as "delivery agent" with M/s. National Timber and Plywood, thereby he was getting monthly salary of Rs.24,000/-. The nature of work was serving at the shop and delivery of heavy goods articles on motor cycle. However, he is not able to work and earn as before due to the disability. Therefore, he has been adjusted as a 'office boy', on a meager salary of Rs.7,000/- per month.

15) The supportive evidence of AW3-Nishad Chaudhary is that he has been doing a business in the name and styled as 'M/s.National Timber and Plywood'. This evidence is corroborated with the Registration Certificate (Exh.32), issued by Ministry of Micro, Small and Medium Enterprise. He deposed that since 2015 the claimant has been working in his shop. Initially, the claimant was doing delivery of goods to customers. At that time he was paying the claimant Rs.800 per day. After about 1 – 1½ year of the accident, the claimant resumed on work. But he was unable to work as before. Therefore, has given him a table work and paying Rs.250/- per day.

In this regard AW3 relied upon the Employment-salary-Certificate.

15.1) In the cross-examination AW3 admitted that he has not placed on record any *challan* to show that the claimant was working with him as the delivery agent; that, he has not produce any document to show that he was paying cash Rs.24,000/- p.m. to the claimant; that, he did not obtain signature of the claimant on payment vouchers. Therefore, the Tribunal held that the evidence of AW3 was not supported by any reliable document. In the FIR the claimant stated that he was doing a business of sliding windows. In view of this evidence, the Tribunal declined to accept that at the time of the accident, the claimant was working as the delivery agent and thereby he was getting income of Rs.24,000/- per month. However, considering the nature of the work of the claimant as stated in the FIR, the Tribunal held that the notional monthly income of the claimant was Rs.15,000/- per month. Such a first version as to one's occupation and income in an FIR related to accident case is generally a natural response and answers to police inquiries.

15.2) That apart, at the time of accident, the claimant was residing and working in *Kandivali*, Mumbai. The personal and living expenses of a person residing in Mumbai are higher compared to a person

residing in a smaller District or *Taluka*. All kinds of skilled and unskilled labour are easily available in Mumbai. The claimant was able bodied before the accident. As such, it is probable that the claimant was doing the work stated in the FIR to earn his livelihood. Moreover it was a skilled work. Therefore, I am in agreement with the aforesaid finding and conclusion of the Tribunal as to the occupation and monthly income of the claimant as Rs.15,000/-.

16) Considering the nature of the fracture it is obvious that it was a grievous injury. Ankle part in human body helps to balance the body in different actions. Therefore, and considering the nature of the work of the claimant, it is probable that the claimant was not able to work and earn for 6 months. Therefore, the Tribunal is right in awarding Rs.90,000/- as loss of six months income.

17) Considering the evidence of AW2-Dr. Desai, The Tribunal held that the claimant has sustained functional disability to the extent of 15% on account of the said fracture. There is nothing in the evidence to disagree with this finding. Therefore, the award of Rs.6,42,600/- towards 'loss of the future income' is just and reasonable.

18) In view of the above discussion, the Appeal is liable to be dismissed.

18.1) Hence, following Order is passed :-

- (i) The Appeal is dismissed.
- (ii) The parties shall bear their own costs.
- (iii) The statutory deposit shall be transferred to the Tribunal and it shall be disbursed in accordance with law.
- (iv) In view of disposal of the Appeal, Interim Application No.11902 of 2024 stands disposed of.
- (v) As a result, Interim Application No.1441 of 2025 for permission to withdraw the award amount is allowed in terms of prayer clause (a).

(SHYAM C. CHANDAK, J.)