

# **Sunder vs The New India Assurance Company Ltd. And ... on 30 April, 2025**

**Author: Vipin Chandra Dixit**

**Bench: Vipin Chandra Dixit**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:70589

Court No. - 48

Case :- FIRST APPEAL FROM ORDER No. - 2265 of 2009

Appellant :- Sunder

Respondent :- The New India Assurance Company Ltd. And Another

Counsel for Appellant :- S.D. Ojha

Counsel for Respondent :- Aditya Singh Parihar

Hon'ble Vipin Chandra Dixit,J.

Heard Sri S.D. Ojha, learned counsel for the appellant and Sri Aditya Singh Parihar, learned counsel appearing on behalf of The New India Assurance Company Ltd.-respondent no.1. No one is present on behalf of respondent no.2, who is owner of the vehicle.

This first appeal from order has been filed under Section 173 of Motor Vehicle Act, 1988 on behalf of the claimant-appellant for enhancement of compensation against the judgment and award dated 24.4.2009 passed by Special Judge(E.C.Act)/Motor Accident Claims Tribunal, Meerut in M.A.C.P. No. 91 of 2005 (Sunder vs. The New India Assurance Co. Ltd. and another) by which compensation of Rs. 98,900/- along-with 6% interest has been awarded to the claimant-appellant on account of

injuries received by him in a road accident on 04.08.2008.

It is submitted by learned counsel for the appellant that claimant-appellant had received grievous injuries in the accident and has become permanent disable on account of injuries received by him. It is further submitted that the accident was occurred on account of sole negligence of driver of Crane bearing no. HR 38A/1369, which was driven by its driver very rashly and negligently and there was no negligence on the part of driver of TATA bearing no. UP 11 F 3880. The Claims Tribunal while deciding issue no. 1 has recorded the finding that it was case of head on collision in between Crane and TATA vehicle and drivers of both the vehicles were equally negligent and responsible for the accident. Compensation of 50% has been reduced on account of 50% negligence of driver of TATA vehicle. The liability to pay 50% amount of compensation is fixed upon respondent-insurance company/insurer of Crane on account of 50% negligence of driver of Crane. It is next submitted that the appellant-claimant was travelling in TATA vehicle as a passenger and he was not driving the TATA vehicle and there was no negligence on his part. It was a case of composite negligence and Claims Tribunal has erred in reducing 50% compensation on account of contributory negligence of driver of TATA vehicle. He placed reliance on the judgement passed by the Hon'ble Apex Court in the case of Khenyei Vs. New India Assurance Co. Ltd. and others, reported in 2015 0 AIR(SC) 2261. Lastly, it is submitted that the Claims Tribunal has also erred in not awarding any amount towards future prospects, whereas claimant-appellant is entitled for 40% future prospects in view of law laid down by Hon'ble Apex Court in the case of Syed Sadiq Vs. Divisional Manager, United India Ins. Co., reported in 2014 0 Supreme(SC) 34. No other ground has been pressed by learned counsel for the appellant.

On the other hand, learned counsel appearing on behalf of respondent Insurance Company has not disputed the fact that the claimant-appellant was travelling in TATA vehicle and it was a case of composite negligence. Learned counsel for the respondent has also not disputed that the claimant-appellant is entitled for 40% future prospects. It is further submitted that claimant-appellant had not received grievous injuries and disability certificate was not issued by Chief Medical Officer, but was issued by Dr. Ravindra Singh who is habitual to issue disability certificates in motor accidental claims cases.

Considered the submissions of the learned counsel for the parties and perused the record.

As per the claim petition, it is an admitted fact that the claimant-appellant was travelling in TATA vehicle which was collided with crane, insured with respondent no. 1-insurance company. It was a case of composite negligence and it is open to the claimant to claim compensation either from one vehicle or from both the vehicles in view of judgement of Hon'ble Apex Court in the case of Khenyei (supra). The Claims Tribunal has erred in reducing 50% compensation on account of contributory negligence of driver of TATA vehicle. So far as future prospects is concerned, since the age of the appellant was below 40 years at the time of accident, he is entitled for 40% future prospects in view of judgment of Hon'ble Apex Court in the case of Syed Sadiq (supra). In absence of any evidence in respect of monthly income, the Claims Tribunal has rightly accepted the income of claimant as Rs. 3,000/- per month. Disability certificate discloses the disability of 40% and Claims Tribunal has rightly accepted 30% functional disability and loss of earning capacity to the extent of 30%. The age

of the injured was 35 years at the time of accident as such the multiplier of 16 was also rightly applied by the Claims Tribunal.

In view of above discussion, the compensation awarded by the Claims Tribunal is reassessed as below:-

- 1) Monthly income = Rs.3,000/-
- 2) Annual income = Rs. 3,000/- X 12= Rs.36,000/-
- 3) Future prospects (40%) = Rs.14,400/-
- 4) Total annual income = Rs.36,000/- + Rs.14,400/- =Rs.50,400/-
- 5) Loss of earning capacity (30%) : Rs. 15,120/-
- 6) Multiplier applicable : (16) = Rs. 15,120/- x 16 = Rs. 2,41,920/-
- 7) Loss of future income : Rs. 2,41,920/-
- 8) Medical expenses : Rs. 20,000/-
- 9) Pain and suffering : Rs. 5,000/-

Total : Rs. 2,41,920/- + Rs. 20,000/- + Rs. 5,000/- = Rs. 2,66,920/-

The first appeal from order filed by claimant is hereby partly allowed and compensation awarded by the Claims Tribunal is enhanced from Rs.98,900/- to Rs.2,66,920/-. The claimant-appellant is also entitled for 6% interest on the enhanced amount from the date of judgment and award of Claims Tribunal i.e. 24.04.2009.

The respondent-Insurance Company is directed to deposit the enhanced amount along-with interest, within two months from today before the concerned Motor Accident Claims Tribunal. The appellant-claimant is entitled to withdraw the entire deposited amount without furnishing any surety.

No order as to costs.

Order Date :- 30.4.2025 PS