

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

FIRST APPEAL NO. 157 OF 2015

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Bajaj Alliance Insurance Co. Ltd.)
Thane Divisional Office,)
Gokhale Road, Thane (W).)Appellant
(Org. Opponent No.2)

Versus

1. Rohidas Ambadas Chavan)
Age : 55 years, Occu : Service as Doctor)
R/o. Sayli Apartment, Flat No.1103,)
Vasant Vihar, Lok Puram Pawar Nagar,)
Thane (W).)Respondent
(Org. Claimant)

2. Ramesh Marte Sonawale)
Adult, R/o. Room No.442, Ward No.2,)
Chitalsar, G. B. Road, Manpada,)
Thane.)Respondents
(Org. Owner/Opp. No.1)

Ms. Yogita Deshmukh Chitnis for the Appellant.

Mr. Shrishailya Deshmukh for the Respondents.

CORAM : JITENDRA JAIN, J.

DATED : 07th JULY 2026

JUDGMENT :

1. By consent, taken up for final hearing.
2. This appeal is filed by the Insurance Company challenging order dated 4th July, 2012 of the Motor Accident Claims Tribunal, Thane (Tribunal), whereby, Rs.11,71,394/- has been awarded to the claimant on

account of injury sustained because of the accident. The breakup of Rs.11,71,394/- is at page 14, of the Tribunal's order.

3. The main contention of learned counsel for the Insurance Company is with regard to Rs.6,60,000/- awarded towards loss of income from private practice and Rs.3,66,586/- awarded towards loss of income due to absence from duty.

4. With regard to loss of income due to absence from duty, the Tribunal has discussed this issue in paragraph 24. The Tribunal refers to the evidence of Ms. Usha Kanchan and comes to a conclusion that during the 11 months period when the claimant did not attend his duties, he is entitled for compensation of Rs.3,66,586/-, being salary for 11 months.

5. In my view, this finding is perverse since the Tribunal has not considered the evidence of Ms. Usha Kanchan correctly. In the evidence Ms. Usha Kanchan has admitted in paragraph 2 in cross-examination that the claimant has taken salary during the leave period. If the employer has admitted that the claimant was taking salary during the leave period and that has not been considered by the Tribunal, then in my view, awarding of compensation on that account is based on a material which is contrary to the facts on record. Therefore, the compensation awarded towards absence from duty could not have been granted by the Tribunal in the light of express admission by the employer that during the leave period the claimant was drawing salary.

6. The second contention of the learned counsel for the Insurance Company is with regard to Rs.6,60,000/- awarded on account of loss of earning from private practice. The claimant was a doctor working with the

government hospital. In the application filed before the Tribunal, there is no mention that the claimant was earning additional income from private practice. For the first time in the examination in chief, this claim of private practice was raised. In the cross examination, the claimant has expressly admitted that he has not produced any documentary evidence to show that he was a private practitioner. I fail to understand that if the claimant was doing private practice and was claiming Rs.10,000/- per month, then why a single piece of evidence could not have been produced. A private practitioner needs to have some establishment where the patients come for the treatment. Nothing has been brought on record to show by any documentary evidence that the claimant was doing private practice. It is not even the case of the claimant that this private practice was being done from his residence.

7. Furthermore, nothing has been shown to indicate that necessary rules and regulations or permissions were not required from the government for doing private practice nor anything has been shown which would indicate that the government permitted him to do private practice. In the absence of any evidence to show that he was doing private practice, a welfare legislation cannot be used for profiteering, and moreso by a person who is engaged in the profession of a doctor and working with the government. Therefore, the Tribunal's finding of awarding Rs.6,60,000/- towards private practice is to be quashed and set aside.

8. The learned counsel for the original claimant has relied upon the decision of the Madras High Court in the case of *Mary Immanuvel & Anr. vs. Periyasamy & Ors.*¹ to contend that it should be presumed that a government doctor definitely had a private practice and therefore, the

¹ 2017 SCC OnLine Mad 37748

Tribunal's order awarding compensation on this ground is sustainable. With respect, I do not agree with the view taken by the Madras High Court. The onus is on the person claiming that he is in a private practice to show that in effect he was doing private practice and was earning from the said practice. Furthermore, in case of a government doctor, certain compliances have to be done which also cannot be brushed aside. This Court is concerned with welfare legislation and a person who has not led any evidence nor has shown any government rules and regulation which would indicate no permission is required, can be permitted to take the benefit of welfare legislation for claiming the compensation without even discharging basic onus.

9. In view of above, the Tribunal's order to the extent it awarded Rs.6,60,000/- towards loss of income from private practice and Rs.3,66,586/- towards loss of income due to absence from duty is quashed.

10. If the above two amounts have been deposited by the Insurance Company with the Tribunal, then same should be refunded alongwith accrued interest thereon. The balance compensation alongwith interest after reducing the above amount should be withdrawn by the claimant.

11. Statutory deposit of Rs.25,000/- to be transferred to the Tribunal and the parties are at liberty to make application for refund of the same.

12. Appeal is allowed to the above extent.

[JITENDRA JAIN, J.]