

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.: 695 OF 2004

Rahul S/o Tukaram Pawar,
Age: 12 years, Occ.: Education,
Minor u/guardianship of his
father Tukaram S/o Annarao Pawar,
R/o Gotegaon, Tq. Kaij,
Dist. Beed.

... **APPELLANT**
[ORIG. CLAIMANT]

VERSUS

1. Prakash S/o Madollappa Sorde,
Age: years, Occu.: Owner,
R/o Nilanga, Tq. Nilanga,
Dist. Latur.
2. The New India Assurance Company,
Through it's Branch Manager,
Latur.

... **RESPONDENTS**
[ORIG.RESPONDENTS]

Mr. S. S. Manale, Advocate for the Appellant.
Mr. V. N. Upadhye, Advocate for Respondent No.2.

@@@

CORAM:-
DATED:-

T. V. NALAWADE, J.
14th DECEMBER, 2015.

ORAL JUDGMENT:

1. The appeal is filed to challenge the judgment and award of MACP No.319 of 2000 which was pending before Claims Tribunal, Latur. The Tribunal has granted compensation of Rs.62,000/- on the principle of "fault" and

the amount is inclusive of the amount which was awarded under the principle of “no fault”. The proceeding is filed by the original claimant for getting enhancement of the compensation. Both the sides are heard.

2. The submissions made and the record show that in the accident the claimant, who was aged about 9 years, sustained fracture injury to middle 1/3rd of Tibia and Fibula, right leg and he sustained injury to head due to which there was intracerebral hemorrhage. There is record like discharge card prepared by a reputed hospital from Latur to show that he was indoor patient from 10th June, 2000 to 2nd August, 2000. A disability certificate in Form-comp. A is issued by one doctor who is M.S. and the disability certificate shows that due to the injury to brain there is permanent disability to the extent of 50% as there is speech problem due to the injury.

3. It appears that the doctor, who gave the disability certificate is not examined. In such a case it is always necessary for the claimant to prove the exact disability caused by the injury sustained in the accident. The disability needs to be such that it affects the future

prospects in career and also the earning capacity. There needs to be substantial evidence in that regard. As there is nothing in that record, at this stage, it cannot be said that the claimant is really suffering from permanent disability which is to the extent of 50% due to injury to brain. Learned counsel for the Appellant submitted that meager amount of compensation is awarded and even the extent of disability which can be presumed due to injury caused to right leg is not properly considered. It appears that no separate disability certificate was produced in respect of the injury sustained to right leg. This Court holds that to ascertain the just compensation payable to the Appellant it is necessary to remand the matter.

4. In the result, the appeal is partly allowed. The judgment and Award of the Tribunal is hereby set aside. The matter is remanded back to the Tribunal only to ascertain the quantum of compensation. Liberty is to be given to both the sides to lead evidence only on the quantum of compensation. If some amount is already paid on the principal of "fault", that is to be considered and if the amount is enhanced that amount needs to be deducted

and no interest in respect of that amount needs to be granted.

5. Parties to appear before the Tribunal on 1st February, 2016.

6. Send R. & P. back to the Tribunal.

[T. V. NALAWADE, J.]

Dated:14/12/2015.
ans/695