

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

42 FIRST APPEAL NO. 149 OF 2015

HARIDAS NARAYAN KENDRE

VERSUS

KAMOLAKAR N. SHIVALKAR AND OTHERS

...

Advocate for Appellant : Mr. Manale Satish S
Advocate for Respondent No.1 : Mr. M. L. Dharashive
Advocate for Respondent No.3 : Mr. D. P. Deshpande

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CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. The present appellant had filed application for compensation on account injury sustained by him in an accident. The claim is partly allowed. Aggrieved thereby, the present appeal.

2. Mr. Manale, the learned counsel for the appellant submits that the appellant was working as driver with the MSRTC. In an accident, the appellant suffered disablement of 64.22% of the left lower extremity and 4.95% of left upper extremity. Multiple fractures were sustained. The said accident took place on 2nd July, 2011. The appellant was hospitalized till 4th August, 2011. Thereafter on 12th October, 2012, the

appellant was referred the Medical Board. Upon the report being received, the appellant was removed from his post and was re-employed in March, 2014 as a peon. The learned counsel submits that loss of salary from July, 2011 to October, 2012 has not been considered at all. Learned counsel states that even towards pains and suffering, paltry sum of Rs.25,000/- has been awarded. According to learned counsel, towards non pecuniary damages, at least Rs.3 lakhs ought to have been awarded as is awarded by the Apex Court in case of **G. Ravindranath @ R.Choudhary Vs. E. Srinivas & another**, reported in 2013 (9) Scale 503.

3. Mr. Deshpande, the learned counsel for the insurance company states that the appellant would get his salary till his removal. There is no proof to show that till that date, he was not paid his salary. Non pecuniary damages is also rightly awarded. It is not that it is a case of functional disability. The appellant is absorbed as a peon and his pay is protected. No such pecuniary loss is occasioned.

4. I have considered the submissions so also the disability certificates.

5. The factum of permanent disability is proved. As far as loss of salary is concerned, the same is rightly considered from October, 2012 to February, 2014. In March, 2014, the appellant is reemployed in the same organization with protection of his pay scale. As such, the said loss cannot be considered.

6. The court has not awarded any amount towards loss of amenities and towards future medical expenses. Considering the judgment of the Apex Court in the case of **Syed Sadiq etc. Vs. Divisional Commissioner, United India Insurance Company**, reported in **AIR 2014 supreme court 1052** I would award Rs.60,000/- toward pains and suffering, Rs.40,000/- towards loss of amenities, Rs.15,000/- towards future medical expenses, and Rs.10,000/- towards cost of litigation.

7. Considering the compensation awarded, the appellant would be entitled for additional compensation of Rs.1,00,000/- (Rupees one lakh). In the light of that, I pass following order.

- i. The first appeal is partly allowed.

ii. Apart from compensation awarded by tribunal, the respondents shall jointly and severally pay additional compensation of Rs.1,00,000/- (Rupees one lakh) to the appellant with interest @ Rs.6% per annum from the date of claim petition till realization.

iii. The first appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC