

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.375 OF 2003

...

NEW INDIA ASSURANCE CO. LTD.

VERSUS

RAJENDRA @ RAJESAHEB SHANKARRAO SHINDE AND OTHERS

Advocate for the appellant: Mr. S. D. Kulkarni h/for
Mr. S. L. Kulkarni

Advocate for respondent No.1: Mr. R.B. Deshmukh

Advocate for respondent No.3: Mr. N. B.Khandare and Mr.
N. P. Jadhav

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CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. Mr. Kulkarni, the learned counsel for the appellant submits that the respondent claimant has suffered only 15% disability but the Commissioner for Workmen's Compensation has awarded compensation considering 100% disability. The same is illegal and without any rational basis.

2. Mr. Deshmukh, the learned counsel for the respondent-claimant submits that after the accident, the claimant is not in position to perform the avocation as driver, as such 100% loss of earning capacity has been rightly considered by the

Commissioner for Workmen's Compensation.

3. The Commissioner, while awarding compensation, has to consider the functional disability. It is submitted that knee of the claimant is damaged and he will not be in position to drive vehicles again. It would be a case of 100% functional disability, if because of injury he is not in position to perform his avocation which was being performed at the time of accident.

4. In the light of above, no substantial question of law arises. The applicant claimant shall surrender his driving licence to the concerned R.T.O.. The first appeal is dismissed. No cost.

5. The amount of compensation deposited is allowed to be withdrawn by the claimant.

(S. V. GANGAPURWALA, J.)

JPC