

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

FIRST APPEAL NO. 287 OF 2013

USMAN KHAN FAKIR KHAN PATHAN
VERSUS
MOHD AKBAR HAJI MOHD HARNOON AND ANR

...
Advocate for Appellant : Agrawal Pavankumar S.
Advocate for Respondents : M S Kulkarni For R/2

...
CORAM : S.V.GANGAPURWALA,J.

DATED : 20TH OCTOBER, 2015

ORDER :-

Mr.Agrawal, learned counsel submits that though the certificate states that the permanent disablement is 17% in fact it is a case of 100% functional disability. According to the learned counsel the appellant may not be in a position to drive because of the injury sustained in the accident in such case functional disability of 100% is required to be considered. According to the learned counsel, the aspect of functional disability has not been considered by the Court. Even income of the appellant per month has been considered on the lower side, the same is considered only Rs.2100/- the work of a driver is of a skilled nature so atleast same ought to have been considered as Rs.6000/-p.m. then according to the learned counsel the Commissioner has awarded meager amount of compensation.

2] Mr.Kulkarni, learned counsel submits that the compensation has been awarded on the higher side though claimant was entitled for compensation of Rs.27500/-, the Court has awarded Rs.90,000/-.

3] I have considered the submissions. Even if I consider

Rs.6000/- p.m. as an income and 17% disability, still the amount of compensation that is awarded would be in the same range. I cannot consider 100% disability unless and until the claimant proves that he is not in a position to perform his avocation which he was performing at the time of the accident. There is nothing on record to show that the claimant because of the accident was required to surrender the license.

4] In light of the above, no substantial question of law arises. Appeal is dismissed. No costs.

[S.V.GANGAPURWALA,J.]

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