

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.97 OF 1999

Komalsing Ramu Patil, Age 35
years, occ. Agril., r/o.
Kedgaon nandi, Tq. Pachora, : ..Appellant
Dist.Jalgaon

V E R S U S

Shantaram Popat Deore
1) (Patil), Age 35 years, occ.
Agril., r/o. Wadi Shewale,
Tq. Pachora, Dist.Jalgaon

Walmik s/o. Shantaram Deore
2) (Pail), age 9 years, c/o.
Shantaram Popat Deore, r/o.
As above

Sow. Manjulabai w/o. Kawtik
3) (Patil), Age 50 years, occ.
Agril., r/o. Mehendale, Tq.
Bhadgaon, Dist.Jalgaon

Ashok Ukha Sapkale, Age 32
4) years, Occu. Driver, R/o.
Kedgaon Nandi, Tq. Pachora,
Dist.Jalgaon

National Insurance Company,
5) 70, Navi Peth, Near Old S.T. : ..Respondents
Stand, Jalgaon, Dist. Jalgaon

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Mr.P.R.Katneshwarkar, advocate for appellant

Mr.S.H.Jadhav, advocate i/b. Mr.S.P.Brahme,
advocate for respondent nos.1 to 3

Mr.D.V.Soman, advocate for respondent no.5

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 17, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay compensation to present respondent-claimant, the driver-cum-owner of the vehicle involved in the accident, is before this Court.

3] Two Motor Accident Claim Petitions i.e. bearing no.118 and 1992 and 145 of 1992 were filed in the trial Court arising out the same accident.

4] From the record, it appears that one Ashabai was examined on behalf of the claimants in both the petitions. The present appellant did not enter in the witness box to state that the accident did not occur due to negligence attributable to him.

5] The main grievance of the appellant is that though, no witness from the claimant was examined, the trial court has granted the compensation. Further, though the compensation of Rs.50,000/- was claimed, learned Member has granted compensation of Rs.70,000/-.

6] Upon hearing both sides, in my view, there is no force in the appeal and the appeal is therefore, dismissed for the reasons to follow.

7] It should be noted that both the claim petitions were tried together by learned Member. Therefore, no witness was examined on behalf of

the claimants in both the petitions independently. Therefore, there is no question to draw adverse inference for non-examination of witnesses from the claimant in the present proceeding. Further, learned Member took into consideration the documents regarding the investigation made by the police also. In that view of the matter, there is no merit in the present appeal

8] As regards the excess compensation directed to be paid to the claimant i.e. Rs.70,000/-, it is now well settled that the claimant has merely to file the application and thereafter, it is for the Tribunal to decide as to what would be the just compensation. In the circumstances, the claimant is entitled even for more amount of compensation than claimed in the petition which, however, can be awarded subject to the fact that direction to deposit the additional court fees is required to be issued on the excess amount of compensation.

In the present case, it appears that no such direction was issued.

9] In the circumstances, the appeal is dismissed without any order as to costs.

. However, Respondent nos.1 and 2 are directed to deposit the additional court fees on the excess amount of compensation granted by learned Member within a period of six weeks from the date of this judgment.

. Decree be drawn accordingly.

[M.T. JOSHI, J.]