

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 85 OF 2001

Shantilal Rikabdas Bora,
Age : 51 years, Occu. Business
and Agriculture,
R/o Jamkhed, Taluka Jamkhed,
District Ahmednagar

APPELLANT

VERSUS

1. Bapu Banshi Waghmare,
Age : Major, Occu. Service/
Driver, R/o Patoda S.T. Depot,
at post Patoda, Dist. Beed
2. Maharashtra State Road Transport
Corporation, through Depot
Manager, Latur S.T. Depot,
Latur

RESPONDENTS

Mr. Ram B. Deshpande, Advocate for the appellant
Mr. M.K. Goyanka, Advocate for respondent No. 2
None for respondent No.1

CORAM : M.T. JOSHI, J.

DATE : 11/03/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the lesser compensation awarded by

the learned Member of the Motor Accident Claims Tribunal in an application under section 166 of the Motor Vehicles Act, the present appeal is filed by the original applicant.

3. The record would show that the present appellant was injured in the motor vehicular accident. The permanent disability certificate shows the following injuries suffered by the appellant :-

- (I) Fracture supra-condylar to lower end humerus
Y type involving elbow joint (R) with
displacement
- (II) C.L.W. over right parietal scalp horizontal
size 3 cms – 1 cm
- (III) Contusion to right upper thigh
- (IV) Contusion of skin over right elbow
5 cms x 4 cms

In the circumstances, the Orthopaedic Surgeon came to the conclusion that the appellant has suffered 35% permanent disability. The appellant claimed that he was agriculturist having 14 acres of land and shop-keeper of utensils at his village Jamkhed. The learned Member has awarded only Rs. 10,000/- on the count of loss towards

the permanent disability and nothing was granted towards loss of amenities.

. Mr. Deshpande, learned counsel for the appellant, further submitted that though it was proved before the learned Member that the appellant has paid an amount of Rs. 35,000/- towards the hospital and operation charges, merely because there were over-writing, the same was reduced to Rs. 25,000/-.

4. Mr. M.K. Goyanka, learned counsel for respondent No.2, on the other hand, submitted that it was proved before the learned Member of the M.A.C. Tribunal that the appellant was not personally working in the field and he was also merely supervising his shop and therefore, there was no loss of earning. He submitted that the learned Member has rightly deducted the amount from the hospital charges as there was over-writing in the bill.

5. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following point arises for my determination :-

"Whether the learned Member of Motor Accident Claims Tribunal has granted just compensation to the present appellant ?"

My finding to the above point is in the negative. The appeal is, therefore, partly allowed, for the reasons to follow:-

R E A S O N S

6. It should be noted that at the time of accident, the appellant was 50 years old. He has suffered fracture to the elbow joint and there was also displacement. Earlier to the accident, he was active in the work of supervising the agricultural operations as well as running the shop of utensils. Considering all these facts, an amount of Rs. 10,000/- granted by the learned Member on the count of loss of earning as well as loss of amenities appears to be very meager one. Considering the fact that the appellant has suffered 35% permanent disability, an amount of Rs. 35,000/- towards

the loss of income as well as towards amenities jointly ought to have been granted.

7. As regards the issue of hospital charges, a bill of the concerned doctor would clearly show that in place of "Rs. 5000.00", figure "1" is added and certain over-writing was made. Therefore, the learned Member doubted the veracity of the document - bill at Exhibit-39. I do not find any infirmity in deducting the said amount upon perusal of the said document (Exh-39). In the circumstances, there would be no enhancement in the hospital charges as accepted by the learned Member. In the circumstances, the following order:-

8. The appeal is hereby partly allowed with proportionate costs.

. The respondents No. 1 and 2 shall jointly and severally pay an additional compensation of Rs. 25,000/- (rupees twenty five thousand) to the present appellant with interest at the rate of 8% per annum, from the date of filing of the present first appeal. The amount be deposited by the respondents No. 1 and 2 in the office of the concerned Motor Accident Claims Tribunal within a

period of three months, for being disbursed to the present appellant. On failure to deposit the amount as directed above, the amount shall carry interest at the rate of 10% per annum from the date of this order.

[M.T. JOSHI]
JUDGE

npj/fa85-2001