

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

**FIRST APPEAL NO.1321/2015**

Pravin Shivaji Dethe,  
Age : 28 Years, Occu. : Nil,  
R/o. : At post Shedi,  
Taluka and Dist. : Ahmednagar .. Appellant

Versus

1. Rakesh Somprakash Bhatiya,  
Age : Major, Occu. : Business,  
R/o : Plot No. 24, Laltaki,  
Ahmednagar
2. New India Insurance Co. Ltd.,  
Abat Building, Near Hotel Ashoka,  
Aurangabad Road,  
Ahmednagar,  
Through its Manager .. Respondents

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Mr.Parag V. Barde, Advocate for appellant

Mr.A.B.Kadethankar,Adv. For respondent no. 2.

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

**DATE : 12TH OCTOBER,2015**

**PER COURT :**

1] The present appellant had filed application for compensation under the provisions of Employees Compensation

Act, on account of the injury sustained by the applicant in an accident. The Commissioner partly allowed the claim application. The present appeal is filed for enhancement. Mr. Barde, the learned counsel for the appellant submits that, though the disability certificate is showing the disability to the extent of 50% in fact it is a case of 100% functional disability. The applicant is working as a driver. Considering the injuries sustained there was no impediment for the Commissioner to arrive at a conclusion that appellant has sustained 100% functional disability. The rods were required to be placed in the leg of the appellant. The learned counsel submits that, the salary of Rs. 8,000/- per month ought to have been considered with Rs. 100/- daily allowance, error has been committed by the Commissioner in respect of the same. The learned counsel further submits that, it was an error committed by the Commissioner in assessing the disability to the extent of 35% only.

2] Mr. Kadethankar, the learned counsel for the insurance company submits that, doctor was not examined. 100% functional disability is not proved. Even license is not surrendered. The Court has properly calculated the compensation amount.

3] With the assistance of the learned counsel I have gone through the judgment. This being an appeal under the Employees Compensation Act, can be considered only on substantial question of law.

4] After assessing the evidence it has been held that, the applicant was getting monthly income of Rs. 7,042/-. The same was based on appreciation of evidence. As such, the case of the present appellant that, he was getting Rs. 8,000/- per month cannot be considered.

5] The disability certificate has been produced on record which shows disability to the extent of 50%. The insurance company has admitted the said disability certificate as has been observed by the Commissioner in the judgment itself. For considering the functional disability as 100% the person who was doing a particular avocation at the time of accident should be totally disabled to perform the said avocation. In the present case, there is no evidence to show that, because of the accident the appellant was required to surrender his license or that his license is not renewed. The disability certificate is of 50% only. The said disability certificate is admitted by the insurance company. As such, it was erroneous on the part of Commissioner to consider disability to the extent of 35% only. The disability of 50% as is shown should have been accepted.

6] Considering the above the disability to the extent of 50% is to be considered then, the amount of compensation, the appellant would be entitled to, would be Rs. 4,60,539/-.

7] In the result, I pass the following order.

The impugned judgment and award passed by the Commissioner Workmen's Compensation, is modified. The opponents are directed to pay jointly and severally compensation amount of Rs. 4,60,539/- after excluding the amount of medical expenses of Rs. 2,25,274/- to the applicants with the interest of 12% per annum from the date of accident till realization. First appeal is partly allowed. The amount already deposited shall be adjusted as on the date the same is paid. No costs.

**[S.V.GANGAPURWALA,J.]**

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