

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

FIRST APPEAL NO. 823 OF 2014

Ashwini Omprakash Koli	.. Appellant
Versus	
Damjibhai Jivarambhai Mange and another	.. Respondents

Ms. Sabahat T. Kazi, Advocate for the Appellant.

The Respondent No. 1 is served.

Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

PER COURT :

1. Ms. Kazi, the learned counsel for the appellant submits that, appellant met with an accident and sustained 50% permanent disability. There was fracture of right clavicle and fracture of left end radius. There was also contused lacerated wounds on pro-to-parietal region and on chin. The learned counsel submits that, the Tribunal has awarded very meager amount of Rs. 60,000/- lump-sum for the injuries and disability and awarded Rs. 30,000/- towards pains and sufferings. According to the learned counsel the treatment went for seven months and for that Rs. 40,000/- has been awarded. The learned counsel submits that, even aspect of loss of marriage prospectus has not been considered by the Tribunal.

2. Mr. Chapalgaonkar, the learned counsel for the respondent

No. 2 submits that, the evidence of doctor has not been believed by the Tribunal. It is nowhere stated that on what basis the doctor has said that the appellant has sustained 50% disability. The doctor who has performed the surgery and doctor who has issued certificate is different. It has also come on record that the surgery was successful.

3. The facts that are not disputed are that, the appellant suffered fracture right clavicle and fracture of left end radius. The appellant had undergone operation. The plate was inserted to treat the clavicle fracture. The said aspect if is considered, then atleast Rs. 1,00,000/- ought to have been awarded lump-sum. The Tribunal has awarded Rs. 30,000/- on account of pains and suffering. An amount of Rs. 60,000/- would be reasonable on account of pains and sufferings. There is no question of deduction of 20% amount on account negligence of car driver as it would be case of composite negligence.

4. In the result, the respondent Nos. 1 and 2 shall jointly and severally pay Rs. 2,00,000/- to the appellant inclusive of non fault liability compensation amount with interest at the rate of 8% per annum from the date of petition till its realization. The amount already paid shall be adjusted. The first appeal accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]