

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

904 FIRST APPEAL NO. 876 OF 2014

SATISH BAPURAO POKALE

VERSUS

PRAVIN NARAYAN SHARMA AND OTHERS

...

Advocate for Appellant : Mr.Choudhari Sushant B

Advocate for Respondents 2 and 3 : Mr. Uday S. Malte

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 13th October, 2015

PER COURT :

1. The present appellant had filed an application for compensation under section 166 of the Motor Vehicles Act on account of injury sustained by him in an accident. The tribunal has partly allowed the claim application. The present appeal is filed for enhancement of compensation.

2. Mr. Choudhari, the learned counsel for the appellant/claimant submits that disability certificate was proved which shows that disability sustained by the appellant is to the extent of 40%. The tribunal, while calculating the loss of income, has considered the disability only as 25%. According to the learned counsel, because of the injury sustained, the appellant would not be in position to perform his job as a driver. As such, 100% functional disability should have been considered.

The learned counsel submits that income has also been considered on the lower side. The learned counsel further submits that even under the heads of non pecuniary damages, paltry sum has been awarded. The learned counsel relies on the judgment of **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Ltd., reported in 2014 (4) Mh. L.J. 538**. The learned counsel also relied on the judgment of the Apex court in the case of **Kavita Vs. Deepak and others, reported in AIR 2012 SC 2893**.

3. Mr. Malte, the learned counsel for the insurance company submits that there is no proof that the appellant was working as driver and there is also no proof of income. The tribunal has considered income Rs.4500/- per month. According to the learned counsel, the Doctor had admitted that the appellant can drive light motor vehicle with some amount of rest. That would show that it is not a case of 100% disability. Even the certificate is not issued by the Board. That has been rightly considered by the tribunal.

4. I have considered the submissions so also I have gone through the record. The disability certificate is issued by the Doctor who has medically examined the

appellant. The Doctor has stated that the appellant has suffered 40% permanent disability. There is loss of left elbow joint with fracture calvicle united. It is stated that he can drive light motor vehicle only with some amount of rest. In such event, certainly, 100% functional disability cannot be considered.

5. In the light of above, 40% disability can be considered. There is no proof that the appellant was earning Rs.10,000/- per month from auto-rickshaw. As such, the income has also been rightly considered i.e. Rs.4,500/- per month. Multiplier 18 has been rightly applied considering the age.

6. Considering the income of Rs.4,500/- per month with 40% disability and multiplier of 18, the loss of income would come to Rs.3,88,000/-. The tribunal has awarded Rs.1,35,000/- towards medical expenses which is as per record i.e. as per medical bills Exh.34/1 to 34/36. The other bills were not proved. As such, the same are not considered by the tribunal. The said finding of the tribunal naturally can be accepted. Towards pain and sufferings, the tribunal has awarded Rs.10,000/-. Considering the nature of injury sustained i.e. loss of left elbow joint with fracture calvicle united, I award

Rs.50,000/- towards pain and suffering and Rs.50,000/- under the head loss of amenities. Thus, the appellant is entitled for total compensation of Rs.6,23,000/-.

7. In the result, the award passed by the tribunal is modified.

8. The respondents 1, 2 and 3 are jointly and severally liable to pay compensation of Rs.6,23,000/- (Rupees six lakhs twenty three thousand) to the appellant along with interest @ 7.5% per annum from the date of claim petition till realization of the amount.

9. The amount already paid shall be adjusted as on the date the same is paid.

10. The first appeal is accordingly partly allowed. No costs.

(S. V. GANGAPURWALA, J.)

JPC