

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

FIRST APPEAL NO. 288 OF 2003

Ankush S/o Nivrutti Shinde,
Age : 33 Years, Occu. : Nil,
R/o Wadwal (Nagnath), Taluka
Chakur, District Latur .. Appellant

Versus

1. Hanmanta s/o Dattatraya @ Dattoba
Jadhav, Age 30 years, Occu. : Driver,
R/o Bembli, Taluka and District
Osmanabad.
2. Surjeetsingh s/o Bholasing Mokha,
Age : Major, Occu. : Business,
R/o 224, Shivaji Nagar, Pune.
3. The Oriental Insurance Co. Ltd.,
Through It's Branch Manager,
Opp. Bus Stand, Latur.
Policy No. 99/11939 valid period
30.1.99 to 29.1.2000.
4. Baban s/o Sopan Nure,
age 26 years, occu. : Driver,
R/o Gharni, Tq. Chakur,
District Latur.
5. Gyanoba Rukmanna Patil,
Age : Major, Occu. : Agri. &
business resident Yellamwadi,
Taluka Chakur, Dist. Latur.

6. National Insurance Company
Ltd., Through it's Branch Manager,
Hanuman Chowk, Latur. .. Respondents

Shri N. B. Patil (Raiwadikar), Advocate for the Appellant.
Shri Dhananjay Deshpande, Advocate for the Respondent No. 3.
Shri Swami, Advocate h/f Shri V. D. Gunale, Advocate for
Respondent Nos. 4 and 5.
Shri P. P. Bafna, Advocate for the Respondent No. 6.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14TH OCTOBER, 2015.

ORAL JUDGMENT :-

. Mr. Patil, the learned counsel for the appellant submits that, the appellant had filed application for compensation under Section 166 of the Motor Vehicles Act (for short "M. V. Act"), on account of the injury sustained by him in an accident. The Tribunal partly allowed the said application. The present appeal is filed for enhancement of compensation.

2. Mr. Patil, the learned counsel further submits that, 1/3rd deduction towards personal expenses has been made which is not permissible as it is an injury claim. The income has been considered as Rs. 21,600/- per year. According to the learned counsel the multiplier of 18 would be applicable, as the appellant was 30 years of age. The learned counsel submits that, no amount has been awarded towards the future prospects. As one hand is completely amputated, the appellant is not in a position

to perform any avocation. The appellant was working as a labourer.

2. According to the learned counsel, the disability certificate has been proved. The same is also not disputed. The learned counsel submits that, even no amount towards pains and sufferings is awarded, nor any amount is awarded towards loss of amenities and medical expenses.

3. Mr. Deshpande, the learned counsel for the respondent No. 3 submits that, in fact the compensation ought to have been computed considering 60% disability only. Income of Rs. 21,600/- per annum cannot be considered. According to the learned counsel, there is nothing to show that it is a case of 100% functional disability. According to the learned counsel, the Tribunal has rightly awarded the compensation after considering all the relevant aspects of the matter.

4. With the assistance of learned counsel, I have gone through the judgment and the record and proceedings. The factum of accident is not disputed. The disability certificate Exh. 60 is also proved. It shows that, the appellant has sustained crush injury to the right fore arm and that is required to be amputated and 60% disability has been considered.

5. The Tribunal has considered the income of Rs. 21,600/- per annum as claimed. The multiplier applicable would be 18 in that case loss of income would be 2,33,200/-. There is nothing on record to show that, it is a case of 100% functional disability. The said evidence is not forthcoming. As such, I have considered the disability to the extent of 60% as per the certificate only.

6. No amount has been awarded towards medical expenses. Of course, the medical bills do not seem to have been produced on record. However, considering the fact that, his one hand was required to be amputated as he sustained the crush injury to the right fore arm. The appellant is required to spent on medical expenses. I would award Rs. 20,000/- towards the medical expenses. It is the case of 60% disability and amputation of one hand. I would award Rs. 50,000/- towards pains and sufferings and Rs. 50,000/- towards loss of amenities. The appellant would be entitled for total compensation Rs. 3,53,200/-

7. In the result I pass the following order.

8. The award passed by the Tribunal is modified. The original opponent Nos. 1 to 3 are jointly and severally liable to pay compensation of Rs. 3,53,200/- to the appellant/claimant with interest at the rate of Rs. 9% per annum from the date of petition till realization. The amount already paid shall be adjusted as on

the date the said payment is made. The appellant shall pay the deficit Court fees on the additional amount of compensation granted. First appeal accordingly allowed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15