

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

FIRST APPEAL NO. 497 OF 2013

BABURAO DAYARAM DANDAGE

VERSUS

1] MSRTC THROUGH THE MANAGER
DIVISIONAL OFFICE MUMBAI

2] SHRI SHAKIL YASIN SHAH

3] NATIONAL INSURANCE COM. LTD. JALGAON

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Advocate for Appellants : Bhokarikar M M
Advocate for Respondents : M K Goyanka For R/1
Adv. Mr.A B Gatne For R/3

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

1] Mr. Bhokrikar, the learned counsel for the appellant submits that, the appellant had sustained injury in an accident as such filed application under Section 166 of the Motor Vehicles Act. The same is partly allowed. The present appeal is filed for enhancement of compensation.

2] Mr. Bhokrikar, the learned counsel for the appellant submits that, disability certificate is produced on record. The Court has awarded meager compensation of Rs. 45,000/-. As per the disability certificate 20% permanent disability is sustained by the appellant. The appellant is running a grocery shop. The

Tribunal has not awarded any amount of compensation towards loss of earning, functional disability, future prospectus etc. and a paltry sum is awarded on account of pains and sufferings and permanent disability. According to the learned counsel the evidence in entirety has to be considered. The learned counsel at this stage states that, the appellant be given opportunity to examine the doctor.

3] Mr. Gatne, the learned counsel for the insurance company submits that, it is not a case that, the appellant did not have opportunity to adduce evidence. Ample opportunity was given to the appellant. The appellant closed his evidence on his own volition, did not examine doctor nor produced any certificate from the Civil Surgeon. According to the learned counsel the Court with the available evidence has properly granted the compensation amount.

4] I have considered submissions canvassed by the respective parties.

5] In the case of **Basappa Sanganasappa Bahvikatti Versus T. Ramesh Tangavelu and another reported in 2014 AIR SCW 6004**, which is relied by the appellant, it is stated that, the doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can only give evidence in regard to the extent of permanent disability and it has further held that, loss of earning capacity is something

that will have to be assessed by the Tribunal with reference to the evidence in entirety. It has also been held that, the percentage of permanent disability with regard to the whole body of a person can not be assumed to be the percentage of loss of earning capacity.

6] Considering the above principle, examination of doctor was imperative. Considering the beneficial nature of the legislation, I am inclined to accept the request of the appellant and grant opportunity to examine the doctor.

7] In the result, the impugned judgment and award is quashed and set aside. The matter is remitted to the Tribunal. M. A. C. P. No. 384 of 2003 is restored to its original position. The parties shall appear before the concerned Tribunal on **16th November, 2015**. The present appellant, respondent Nos. 1 and 3 are before the Court as such it would not be necessary for the Tribunal to issue separate notice to them. However, respondent No. 2 Shakil Yasin is not represented. The Tribunal may issue notice to said Shakil Yasin. The Tribunal shall endeavour to dispose of the claim petition expeditiously. First Appeal is disposed of. No costs.

8] With regard to the prayer of interest, respondents may agitate before the Tribunal. It is submitted that, the MSRTC and the insurance company have satisfied the award. In case the Tribunal enhances the compensation amount, the amount paid by the MSRTC and insurance company shall be adjusted as on the

date the same has been paid so that no interest on the said amount is saddled on the said parties.

[S.V.GANGAPURWALA,J.]

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