

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

FIRST APPEAL NO. 464 OF 2011

Yunus @ Yusuf S/o Maheboobsab
Qureshi, Age 35 Years, Occu. : Business,
At Present nil, R/o Gubal, Tq. Ausa,
Dist. Latur. .. Appellant

Versus

1. Vikas S/o Prakash Ghotale,
Age : 32 Years, Occu. : Business,
R/o Tawashigad, Tq. & Dist.
Osmanabad.
2. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Latur, Tq. and Dist. Latur. .. Respondents

Mrs. U. T. Pathan, Advocate h/f Shri T. W. Pathan, Advocate for Appellant.

Shri V. V. Ingale, Advocate for the Respondent No. 1.

Shri R. F. Totala, Advocate for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 28TH OCTOBER, 2015.

ORAL JUDGMENT :

. The application was filed U/Sec. 166 of the Motor Vehicles Act for compensation on account of permanent disability sustained by the appellant in an accident. The claim petition is partly allowed. The present appeal is filed for enhancement.

2. Mrs. Pathan, the learned counsel for the appellant submits that, 35% partial disability has been proved. According to the learned counsel, there was a fracture to the thigh, because of which the claimant had to undergo surgery on the left thigh, wasting of thigh muscles of grade-III and left knee joint movements were restricted and even left hip joint movements were restricted. The nailing was removed by performing surgery. According to the learned counsel, the appellant was doing the business of selling and purchase of cattle. The learned counsel submits that, towards the permanent disability only Rs. 30,000/- has been awarded. No amount has been awarded towards loss of amenities. A paltry sum of Rs. 5,000/- is awarded towards pains and sufferings.

3. Mr. Totala, the learned counsel submits that, there is no proof of actual loss of income, still the Tribunal has awarded Rs. 30,000/- under the said head. Whatever medical bills are produced, same are considered and awarded. According to the learned counsel, the Tribunal has awarded modest amount of compensation.

4. I have considered the submissions and gone through the record and proceedings. The disability certificate has been proved. The doctor has been examined, wherein the doctor has stated that, nailing was done for the fracture of left femur. The

left knee joint movements were restricted. Left hip joint movements were also terminally restricted. Considering the said injury sustained and the fact that, the claimant was a self employed person, I would award Rs. 75,000/- towards permanent disability. Towards pains and sufferings and for loss of amenities I would award Rs. 40,000/-. The Tribunal has awarded medical expenses of Rs. 36,079/-. The same is rightly considered. I would make it round figure, as such the claimant would be entitled for compensation of Rs. 1,50,000/-.

5. Considering the above, I pass following order.

6. The order of the Tribunal is modified. The respondent Nos. 1 and 2 are jointly and severally liable to pay an amount of Rs. 1,50,000/- to the appellant inclusive of the amount under the no fault liability along with interest at the rate of Rs. 7.5% per annum from the date of petition till realization. The amount already paid shall be adjusted as on the date said payment is made. The first appeal accordingly partly allowed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]