

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

FIRST APPEAL STAMP NO.12506 OF 2015

The Divisional Manager,  
New India Assurance Co.Ltd.,  
Ahmednagar, through its duly  
constituted attorney and  
authorized signatory, Sr.Divl.  
Manager, Legal Hub, New India  
Assurance Co.Ltd., Aurangabad

..Appellant

Versus

1. Vijaykumar Kalyanrao Ranshing  
Age 50 years, Occu. Driver,  
R/o Wadgaon Tandli, Taluka Nagar,  
District Ahmednagar
2. Vijay Surajmal Gadiya,  
Prop. Om Sai Transports,  
Age 47 years, Occu. Business,  
R/o Agarkar Mala, Station road,  
Ahmednagar

..Respondents

Mr Dhananjay P. Deshpande, Advocate for applicant  
Ms M.U. Kakde, Advocate h/f Mrs M.D. Thube – Mhase Advocate for  
respondent No.1

**CORAM : N.W. SAMBRE, J.**

**DATE : 10th August 2015**

**PER COURT**

1. The question of law that is sought to be canvased by the learned Counsel for the appellant is that, the claimant has failed to establish the 100% loss of earning capacity pursuant to the disability of 25% suffered by him.

2. According to Mr Deshpande, learned Counsel for the appellant, the award delivered by the Commissioner for Workmens'

Compensation & Judge, 2<sup>nd</sup> Labour Court, Ahmednagar on 27<sup>th</sup> January 2015 calls for interference.

3. Learned Counsel for the respondent has supported the award.
4. With the assistance, I have perused the award delivered by the Commissioner for Workmens' Compensation and noted that the claimant in his claim petition, who had met with an accident on 13<sup>th</sup> June 2012 while driving a tempo has specifically come out with a case that he has lost his 100% earning capacity in view of nature of disability certified by the Doctor.
5. It is further required to be noted that the nature of disability was proved by the claimant by establishing the expert witness viz. P.W.2 Dr.Mahesh Veer who has deposed in support of the disability certificate Exhibit U-22. Dr.Veer has also certified the degree of disability.
6. Once the degree of disability with the pleadings of 100% loss of earning capacity was on record, it was for the appellant to establish that the victim/claimant has not suffered 100% loss of earning capacity.
7. Admittedly, in the present case, the appellant - Insurance Company has neither pleaded nor brought on record any such evidence. The perusal of the findings based on the evidence of Dr. Veer who was examined as P.W.2 gives entire details about the disability suffered by the claimant, who was employed as a driver.

8. In view thereof, the question of law that is sought to be pressed into service that the claimant failed to establish his 100% loss of earning capacity, in my opinion, is without any basis, as there is enough evidence of concluding that the claimant has suffered 100% loss of earning capacity, on the basis of evidence brought on record.

9. As such, no case for interference is made out. Appeal fails, stands dismissed.

**( N.W. SAMBRE, J.)**

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