

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

FIRST APPEAL NO.114 OF 2015

Laxman Jayram Ekhande

.. Appellants
[Orig.Claimant]

Versus

1]Shaikh Ayyub Shaikh Hiraji
2]Shaikh Ismail shaikh Nabi
3]National Insurance Company
Ltd.through its branch manager
Aurangabad

.. Respondents
[Orig.Respdts.]

...
Shri S.B.Rajebhosale,Adv. For appellant
Shri A.C.Darandale,Adv. For R.1 and 2.
Shri S.R.Bodade,Adv. For R.3

...

**CORAM : S.V.GANGAPURWALA,J.
DATED : 21ST SEPTEMBER, 2015**

ORAL ORDER :-

The present claimant has filed application for compensation u/s 166 of Motor Vehicles Act on account of the injury sustained by the applicant. The application is partly allowed. Present appeal is filed for enhancement.

2] Mr.Rajebhosale, learned counsel for the appellant strenuously contends that the evidence led by the appellant that he was working as a Home Guard with the police station has been totally ignored. It is only in the week days during the holidays the appellant used to do private work of running hotel on a hand-cart. According to the learned counsel, income of Rs.6000/- p.m. ought to have been

considered. The doctor was examined to prove 22% disability sustained by the appellant. The same is also not considered, no amount is awarded on account of the permanent disability sustained by the claimant. The learned counsel submits that under the other head also the amount ought to have been awarded. Such as the loss of enjoyment of life, permanent disability, etc. Even the fingers of his leg are amputated. The claimant has also sustained head injury and injury to the second and third toe of the right leg. Further he has sustained fracture of Maxilla. Scar at posterior aspect of elbow is also there. Movements of right elbow of the petitioner are limited by 30 degree. Pronation and supination of right hand is restricted by 10 degree each. All these aspects have not been considered by the tribunal. The learned counsel submits that the claimant be paid compensation of Rs.5 lakh. The claimant is ready to pay additional Court fees.

3] Mr.Bodade, learned counsel for respondent-insurance company submits that it is not proved that the claimant was working as a Home Guard. No evidence is led except the bare words in the examination in chief and the FIR. The learned counsel submits that the tribunal has awarded compensation under various heads. In fact the doctor who is examined has not treated the claimant. There was no impediment to examine witness from the Kamalnayan Bajaj hospital, Aurangabad where the claimant was admitted and treated. Even the medical bills are not proved, still compensation is awarded. In fact the tribunal has awarded exorbitant amount of compensation.

4] I have considered the submissions. The medical bills are part of record. The certificates are on record. The doctor who is the Orthopedic Surgeon is also examined. He has issued the disability certificate after examining the claimant. There is no reason to

disbelieve the same. The disability sustained by the claimant is 22%. Ofcourse there is no evidence to except the bare words of the claimant to show that the claimant was also working as a Home Guard. Not a single document is produced on record.

5] Even there is no proof of income. Notional income of Rs.3000/- p.m. can be considered. The claimant is aged about 50 years. Considering 22% disability, and the age of the claimant, so also notional income of Rs.3000/- p.m., towards loss of income an amount of Rs.90,000/- can be awarded i.e. Rs.3000/- p.m. multiplier of 13 and considering 22% disability, an amount of about 90,000/- can be awarded under the said head. The Court has awarded an amount of 30,000/- towards pains and agony, the same is reasonable similarly, medical certificates are properly weighed. For loss of future happiness the amount awarded is only Rs.10,000/-. In fact for loss of enjoyment in life more amount would have been awarded as is held by Apex Court in the case of **Syed Sadiq V/s Divisional Manager, United India Insurance Co. reported in 2014(2) SCC 735**. I would award Rs.30,000/- towards the same.

6] In light of that, the claimant would be entitled for total compensation of Rs.3,73,248/- i.e. an additional amount of Rs.1,20,000/- than awarded by the tribunal.

7] In the result the order passed by tribunal is set aside and modified.

8] The respondents shall jointly and severally pay an amount of Rs.3,73,248/- inclusive of the amount under the no fault liability alongwith interest at the rate of 9% p.a. from the date of Petition till realisation. The amount already paid shall be adjusted as on the

date the same is paid. The appellant shall pay Court fees on the additional amount. Appeal accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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