

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

FIRST APPEAL NO. 1843 OF 2013

Komalsing Roopsingh Girase .. Appellant

Versus

Ramesh Naval Sarak and another .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri Dhananjay P. Deshpande, Advocate for the Respondent No.
2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

PER COURT :

. The present appellant had filed application U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act") on account of injury sustained by him in an accident. The claim petition is partly allowed. The present appeal is filed for enhancement of compensation amount.

2. Mr. Chapalgaonkar, the learned counsel for the appellant submits that, the disability certificate is produced on record which shows that the appellant has sustained 20% permanent disability. The Tribunal has not awarded any amount on account of the said permanent disability sustained vis-a-vis income of the appellant. The appellant was running a fertilizer shop and was

also doing agriculture. His income is about Rs. 50,000/- per month. The appellant was aged about 40 years at the time of accident. The multiplier of 15 would be applicable. The learned counsel submits that, considering income of Rs. 50,000/- per month and applying multiplier of 15, the compensation be awarded. Even paltry some is award towards pains and sufferings. No amount is awarded towards loss of amenity.

3. Mr. Deshpande, the learned counsel for the respondent No. 2 submits that, in fact, the appellant has not sustained any loss of earning capacity. The shop license of the appellant has been renewed even after the accident. Even he is doing his agricultural operation and also doing the agricultural avocation by taking the lands of other peasants. This shows that the appellant has not sustained any permanent disability. The Tribunal has rightly considered said aspect and has awarded just amount of compensation.

4. The fact that, the appellant has met with an accident and has suffered some injury is matter of record. The disability certificate is produced on record. The same is not disbelieved by the Tribunal. The Insurance company has not assailed the said findings.

5. As far as the income of the appellant is concerned, there is

absolutely no proof that the appellant was earning Rs. 50,000/- per month from his business and agricultural operation. As far as agriculture is concerned the claim can be entertained only to the extent of loss of supervision charges and not more than that. In respect of commercial business, there is absolutely no document placed on record to substantiate the contention that the appellant was earning Rs. 50,000/- per month. Considering the said aspect, I would consider the income as Rs. 4,000/- per month. It is clear from the renewal of the license that the appellant has not sustained 100% functional disability the case can be considered to the extent of 20% disability. Considering the income of Rs. 4,000/- per month and multiplier of 14 and disability to the extent of 20%, claim in that regard would be Rs. 1,44,000/-. The Tribunal has awarded Rs. 41,875/- towards medical expenses. There is no reason to interfere with the same. The Tribunal has awarded only Rs. 10,000/- towards pains and sufferings, I would award Rs. 25,000/- on the said count and for loss of amenities I would award Rs. 10,000/-. The Tribunal has awarded Rs. 5,000/- towards special diet, which requires no interference. As such, the appellant would be entitled for total compensation of Rs. 2,25,875/-.

6. In the result I pass the following order.

7. The judgment and award passed by the Tribunal is

modified. It is held that, the appellant is entitled for total compensation amount of Rs. 2,25,875/-. The respondents shall jointly and severally pay compensation of Rs. 2,25,875/- to the appellant including the amount paid under the no fault liability along 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 said payment is made. The first appeal is accordingly disposed of.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15