

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO.531 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Devakate A.R., advocate for the appellant.
Mr.D.S.Bagul, advocate for Respondent No.1.

CORAM : S.V.GANGAPURWALA, J.
Date : 31.08.2015.

PER COURT :

1. Heard.
2. Mr.Devakate, learned counsel for the appellant submits that the factum of accident is not disputed. In the accident the claimant suffered permanent disability to the extent of 40%. The Certificate of doctor is produced on record. The claimant is required to be operated. The rod was also inserted in his right leg. The claimant was doing the business of milk distribution, so also agricultural work. The Tribunal only on hypothetical ground considered the disability to the extent of 15% only. No reason is given for considering the disability as 15% only. The said disability is also exhibited having been proved by the claimant. The learned counsel submits that the evidence of the claimant is shattered. The claimant has spent an amount of Rs.1,20,000/- (Rupees one lac twenty

thousand) for medication and hospitalisation. However, only on the ground that medical bills are for lesser amount, the compensation of Rs.1,50,000/- (Rupees one lac fifty thousand) towards medical expenses is not granted. The learned counsel submits that even for pains and sufferings a paltry sum of Rs.4,800/- is granted, so also on account of amenities of life.

3. Mr.Bagul, learned counsel for the Respondent supports the judgment and submits that the disability certificate is not admitted. In absence of the evidence of Doctor, it can not be said that disability Certificate is proved. The Tribunal has taken a liberal approach and has awarded compensation to the claimant on higher side.

4. I have considered the judgment, so also the record and proceedings. The Certificate that the claimant has sustained 40% disability in the accident is marked Exh.26 by the Tribunal. It is a fact that Doctor has not examined. The aspect of functional disability does not seem to have been considered by the Court. The claimant could not prove his income or his business of sale of milk. The Court has considered Rs.3,000/- (Rupees three thousand) as income, which I think is reasonable and proper.

5. Considering above, I hold disability to the extent of 25%. This is in view of the fact that plaintiff has proved that he has to be operated for the fracture on his right leg and rod was required to be

inserted. For medication and hospitalisation Rs.47,000/- (Rupees forty seven thousand) is awarded considering the bills produced were to the tune of Rs.43,000/- only. Considering that some bills may not be there, I would award Rs.50,000/- (Rupees fifty thousand). For pains and sufferings I would award Rs.10,000/- (Rupees ten thousand), and for loss of amenities of life Rs.25,000/- (Rupees twenty five thousand).

6. The claimant as such would be entitled for the following amounts :

1) For loss of probable income Rs.3,000/- p.m. Minus 25% disability which comes to Rs.750/- per month x 12 = Rs.9,000/- per year x 18 (multiplier)	=	Rs.1,62,000/-
2) For medication and hospitalisation	=	Rs. 50,000/-
3) For pains and sufferings	=	Rs. 10,000/-
4) For loss of amenities of life.	=	Rs. 25,000/-
Total	=	Rs. 2,47,000/-

7. The Respondent shall pay total amount of Rs.2,47,000/- to the claimant including No Fault Liability amount together with interest at the rate of Rs.7.5% p.a. from the date of petition till realisation. The amount that may have been paid by the Respondent shall be adjusted as on the date the said payment is made.

8. The First Appeal accordingly disposed of. No costs.

(S . V . GANGAPURWALA, J .)

Dt.31.08.2015.
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