

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

FIRST APPEAL NO.1368 OF 2003

1. The Executive Engineer
Public Health Division, Osmanabad.
2. Syed Ahmed s/o Syed Amir
Age major, Occup. Driver,
Both C/o Executive Engineers,
PWD, Nilanga, Dist. Latur.

**..Appellants
(Ori. respondents)**

Versus

Mohan S/o Manohar Deshmukh
Age: 40 years, Occu.: Business
and Agri. R/o.Rajegaon now at
Killari, Tq. Ausa, Dist.latur.

**.. Respondent
(Ori. Claimant)**

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Mr.C.V.Dharurkar, AGP for Respondent No.1
Mr.S.S. Manale, Advocate for Respondent /Sole.

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CORAM: P.R.BORA, J.

DATE : 05.04.2016

ORAL JUDGMENT:

1. Aggrieved by the judgment and award passed in M.A.C.P.No.279/1998 on 23rd April, 2002, by the Motor Accident Claims Tribunal at Latur, respondents therein have preferred the present appeal.

2. Respondent herein had filed the aforesaid petition claiming compensation for the injuries caused to him in a vehicular accident happened on 4/3/1998 having involvement of a Car owned by the present appellant. Respondent / claimant had claimed the compensation of Rs.4,50,000/-. It was the case of the respondent that because of the amputation suffered to his right leg, he has been incapacitated to do any work and has thus incurred hundred per cent disability. It was a case of respondent that he was running a grocery shop and was earning Rs.5,000/- per month. He had, therefore, claimed compensation of Rs.4,50,000/- from the owner of the offending car. The owner of the vehicle i.e. the present appellant had raised a defense of contributory negligence along with some other defenses. One witness was also examined by the owner to prove contributory negligence on the part of the claimant. The income of the claimant was also disputed. The Tribunal, however, on the assessment of oral and documentary evidence brought before it, allowed the claim petition in part and awarded compensation amounting to Rs.1,75,000/- to the claimant along with 9% interest thereon from the date of filing of the petition till its realization. The said award is impugned in the present appeal.

3. Shri C.V.Dharurkar, learned A.G.P. appearing for the appellant, assailed the impugned judgment on various grounds. Learned A.G.P. submitted that the evidence adduced before the Tribunal was not properly appreciated by the Tribunal leading to improper assessment of the amount of compensation. Learned A.G.P. submitted that, it was writ large that the claimant has contributed the occurrence of the alleged accident vide his negligence, however, that aspect and evidence adduced in that regard has been totally overlooked by the Tribunal. Learned A.G.P. further submitted that the learned Tribunal has wrongly held that the claimant has incurred 70 per cent permanent disablement. Learned A.G.P. submitted that the claimant had not adduced sufficient evidence in respect of the alleged disability incurred by him. Learned A.G.P. further submitted that without there being any evidence as regards the income of the claimant, the learned Tribunal, on surmises, has assessed the compensation.

4. Learned Counsel appearing for the claimant submitted that, in fact, the compensation so awarded by the Tribunal is on lower side. Learned Counsel submitted that the claimant had filed an appeal for enhancement of the said

compensation, however, unfortunately, the said appeal was dismissed because the claimant could not pay the requisite Court fee. Learned Counsel submitted that having regard to the disability incurred by the claimant, the Tribunal ought to have allowed the claim so filed by the claimant in toto. The learned Counsel, therefore, prayed for dismissal of the present appeal.

5. I have carefully considered the submissions advanced by the learned A.G.P. and learned Counsel appearing for the claimants. I have also gone through the record of the case and the evidence adduced in the matter. In so far as the first objection raised by the appellant that, in occurrence of the accident, the claimant had also contributed by his negligence is concerned, the evidence on record is not supporting the case of the appellants. The Tribunal has observed that the witness examined on behalf of the owner i.e. the present appellants did not depose before the Court that the motor cyclist came to wrong side and gave dash to the car; what he stated was that motor cyclist lost balance and in the process gave dash to the right side portion of the car. Learned Tribunal has further discussed as to how the accident had occurred and based on such discussion has recorded conclusion that no blame can be

attributed on the part of the motor cyclist in occurrence of the alleged accident. I do not find any error in the finding so recorded. Even in the appeal no such material is brought to my notice so as to record any different conclusion. In so far as the other aspects are concerned, it appears to me that the Tribunal has taken a very just and moderate view. It does not appear that the Tribunal has committed any error in assessing the compensation. The compensation so awarded by the Tribunal, in no case, can be said to be exorbitant or unreasonable. I see no reason for causing any interference in the impugned judgment and award.

6. In the result, the appeal fails and is accordingly dismissed.

7. The original claimant i.e. respondent herein is allowed to withdraw the amount, deposited either in this Court or with the Tribunal, or which may be invested in the fixed deposit receipt, along with the interest accrued thereon.

(P . R . B O R A)
JUDGE

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