

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 1589 OF 2015

Subhash S/o Bhaurao Jadhav, Aged 18 **APPELLANT**
Years, Occupation Labour/Waiter, Resident
of Sonkhed, Taluka Loha, District Nanded

V E R S U S

- 1 Vishwanath S/o Bajrang Fulpagar, Aged **RESPONDENTS**
Major, Occupation Business, Resident of
Magdoom Nagar, Ambedkar Nagar, Nanded,
Taluka and District Nanded
- 2 The Oriental Insurance Co. Ltd., Through its
Branch Manager, Parbhani, Taluka and
District Parbhani
- 3 The Oriental Insurance Co. Ltd., Through its
Branch Manager, Nanded, Taluka and
District Nanded

Mr. Devanand Y. Nandedkar, Advocate for the Appellant
Mr. R.F. Totala, Advocate for Respondent Nos. 2 and 3

CORAM : A.V. NIRGUDE, J.

DATE : 24th August, 2016

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. By consent of the learned counsel appearing for the parties, taken-up for final hearing. Heard learned counsel for the parties.

4. This Appeal challenges Judgment and Award dated 19th January, 2015, passed by the learned Member of Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 362 of 2010, awarding a sum of Rs.5,35,400/- to the appellant as compensation under Section 166 of the Motor Vehicles Act which included no-fault-liability amount. The appellant felt aggrieved because of this amount, as according to him, the amount should have been Rs.7 Lac.

5. I perused the Judgment. I have also heard the submissions at bar. I also went through the record of the lower Court. The question that arose for my consideration in this Appeal is, whether the appellant could prove that he suffered 60% permanent disability.

6. It is common ground that after the accident, the appellant underwent lengthy medical treatment. It is also common ground that his medical treatment was handled mostly by Dr. Katruwar, who was examined as Witness No. 2 for the appellant.

7. Dr. Katruwar opined that the appellant / his patient has suffered 60% permanent disability due to the injuries he suffered in the accident. In the cross-examination, Dr. Katruwar admitted that he did not refer any orthopedic manual for calculating the percentage of permanent disablement. What appears from his deposition is that Dr. Katruwar's opinion about percentage of disablement is his guesswork and probably was not based on any manual/book.

6. On the other hand, the learned counsel for the respondent - Insurance Company brought to my notice another Disability Certificate that came on record of the lower Court again from the appellant's side. This Certificate is at Exhibit – 42 and was issued by the Medical Officer of the Government Hospital. In this Certificate, permanent disability is shown to be 40%. We have thus two separate Certificates on record. But the learned Member apparently did not use both these Certificates for recording a finding that the appellant suffered 40% permanent disability. From the contents of the Judgment, it appears to me that for arriving at such conclusion, the learned Judge also made wild guess. He saw the appellant and his condition. He also placed reliance on certain observations made by his predecessor and came to this conclusion. In my view, the correct method of calculating percentage of disability is either to believe the deposition of Dr. Katruwar or to place reliance on the other

Medical Certificate (Exhibit – 42), which indicated that the appellant suffered permanent disability to the extent of 40%.

7. I am now trying to appreciate the evidence. I have two options. Either to accept the option indicated above or to discard the Certificate (Exhibit – 42). I would rather discard the Certificate (Exhibit – 42), for which there are two reasons. The appellant had not place reliance on this document at all. Had he placed reliance on this document, he would have examined the Medical Officer of the Government Hospital to substantiate the Certificate. In my view, in absence of deposition of the Doctor who had issued the Certificate (Exhibit – 42), it loses its probative value. In other words, since this document is not properly proved, this document deserves to be discarded. I am aware that the documents produced before the Tribunal in such case are not required to be proved with formal evidence. The document in question was exhibited and I cannot find fault in exhibiting this document. But, in the peculiar circumstance, when there are two Certificates, this Certificate loses its probative value because author of the Certificate did not come before the Court.

8. Now the question is, whether I should believe the deposition of Dr. Katruwar. I am inclined to believe him mainly because he is an expert in this field. He has treated the appellant throughout and therefore his opinion, though appears to be empirical, has more probative value. I therefore hold that the appellant proved 60% permanent disability. The amount of compensation would be increased in the following manner.

6. The compensation under the head of permanent disability would be Rs.3,84,000/- instead of Rs.2,30,400/-. Remaining part of the Award of the learned Judge of the Tribunal will remain unchanged. Award be drawn up accordingly.

(A.V. NIRGUDE, J.)

srm/24/8/16