

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2026 OF 2009

Shaligram Jayram Patil ... Appellant
Vs.
Mubarakkhan Aziz Khan and Anr. ... Respondents

Mr. Mukul Kulkarni, Advocate for the Appellant.
Mr. S.G. Chapalgaonkar, Advocate for respondent no.2.

CORAM : A.V. NIRGUDE, J.
DATE : 02-09-2016.

Per Court :

1. This is appeal by original claimant seeking enhancement in the compensation amount. Appellant filed petition under section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs. Four Lakh on account of an injury claim. Following facts are not in dispute.

2. Appellant on 05/09/2005 was driving his car on public street, a truck came from opposite direction and collided on with his car because of which appellant sustained injuries to both his legs. He was taken to a hospital and despite medical help he was left with 60% permanent disablement. Respondent no.2 insurance company of the truck opposed the claim. The learned member of the tribunal, however, came to a conclusion that the accident had taken place due to negligence on the part of truck driver but the learned judge despite evidence on record awarded only Rs. 2,83,308/- as compensation.

3. The question, therefore, is as to what amount the

appellant would be entitled to compensation, second, whether the evidence on record is sufficient to prove the appellants claim and, third, whether in the facts and circumstances of the case and in the interest of justice the case should be remanded back to the tribunal. Appellant adduced evidence but did not examine the medical practitioner who had issued disability certificate, he even did not lead evidence as to in what manner due to the disablement his capacity to earn is jeopardised.

4. The appellant stated that he was working as agent of Multi Level Marketing company, he was earning Rs. Two Lakh per year, he was also a income tax payer but he did not say as to how due to disablement his earning capacity would be affected. In my view, the appellant deserves an opportunity to go back to the tribunal where he would lead further evidence in support of his claim.

5. The appeal deserves to be allowed. The impugned order is set aside. The case is remanded back to the tribunal where the appellant is given opportunity to lead further evidence as indicated above, in addition to the evidence which is already brought on record, the respondent-company is also entitled to produce further evidence if they want.

(A.V. NIRGUDE)
JUDGE