

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.3275 OF 2015**

Gajanan S/o. Rambhau Mohite .. Appellant

Versus

Narayan S/o. Vishwanath Sontakke .. Respondent

Mr.P.C.Mayure, Advocate for the appellant
Mr.S.V.Kulkarni, Advocate for respondent no.2

**CORAM : A.V.NIRGUDE, J.
DATED : 19.09.2016**

P.C. :-

1. Heard. **Admit.** This is claimant's appeal challenging the amount of compensation awarded by learned Members, M.A.C.T., Parbhani dated 07.08.2015 in M.A.C.P.No.76 of 2014.

2. Undisputed facts are as under:-

3. On 28.10.2013 the appellant was walking on the public road at about 2.00 p.m.. The offending vehicle a tractor came from behind and dashed to the appellant. The appellant fell down. Wheels of the tractor passed over his left hand. Due to which his hand below elbow was completely crushed. He was rushed to the hospital. The Doctors could not save his left hand. It was amputated below elbow.

4. The Medical Board of Parbhani opined that due to amputation and other injuries there was 71% permanent disablement to the appellant. One disability certificate was issued by Civil Surgeon, Parbhani in which it was mentioned that the claimant-appellant had suffered 55% of permanent disablement.

5. In order to prove the loss of earning the appellant-claimant deposed that he was earlier working as Salesman in clothes shop. In addition to it he also worked as an agricultural help to his father. He asserted that his monthly income was about Rs.10,000/-. He has suffered substantial loss of earning capacity.

6. Learned Members held that the appellant's income could not be more than Rs.4,000/- per month. He also held that the appellant suffered loss of income to the extent of 50% due to injury and amputation of his left hand.

7. Learned Advocate appearing for the appellant took exceptions to both these findings.

8. Monthly income of the appellant:- He said that evidence on record does not indicate that the appellant's monthly income was about Rs.4,000/-. He took me through

the evidence. The claimant-appellant in his deposition he stated that his salary as Salesman in Clothes Shop was Rs.6,000/- per month.

9. Learned Member refused to accept this evidence mainly because there was no documentary proof in support of this claim. Learned Member, in my view, erred in appreciating this part of the evidence. In the FIR which the appellant-claimant recorded soon after the incident, he described himself as Salesman working in a cloth shop at Selu having income of Rs.6,000/- per month. At the time of recording FIR there was no possibility of the appellant exaggerating his income. At that time he was more interested in describing as to how the accident took place, he at the most would try to put entire blame on the driver of the offending vehicle but while describing himself he could not have exaggerated. This statement assumes importance and can be taken as documentary proof of monthly income. I am therefore inclined to accept and hold that the appellant's monthly income was Rs.6,000/-.

10. Second question that arose for my consideration is to what extent there occurred loss of earning. There are two medical opinions showing different percentage of physical disability. I would rather make average of both the percentages $[55 + 71]/2 = 63$. In my view there was

63% permanent disability to the appellant. The appellant being a semi-skilled worker his loss of income would be equal to his loss of physical strength.

11. The income of the appellant Rs.6,000/- p.m. Minus 63% = 3780. Yearly income loss $3780 \times 12 = 45,360$. Multiplier of 18 is applicable in this case. Thus the total loss would be $45360 \times 18 = 8,16,480$.

Medical Expenses awarded by Tribunal are Rs.1,08,835.

Compensation for special Diet would be Rs.50,000.

Compensation for Pain and Suffering would be Rs.1,00,000.

Compensation for loss amenities of life including loss of marriage prospects would be Rs.1,00,000.

Total of this would Rs.11,75,315.

12. In view of this the first appeal stands allowed accordingly. New award shall be drawn.

[A.V.NIRGUDE, J.]