

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

3 FIRST APPEAL NO. 187 OF 2017

GANGADHAR MUNJAJIRAO KADAM
VERSUS
BHIMASHANKAR KESHAVRAO PANGARKAR AND ORS

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Advocate for Appellant : Mr. Mayure Pramod C

Advocate for Respondent No.1 : Mr. V. M. Jadhav.

Advocate for Respondent No.2 : Mr. Manoj M. Kadtu.

Advocate for Respondent No.3 : Mr. Aniruddha S. Usmanpurkar.

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CORAM : **V. K. JADHAV, J.**

DATE : 19th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Parbhani dated 15th October, 2016 in MACP No.212 of 2012, the original Claimant has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

3 The learned counsel for Appellant / Claimant submits that though the Appellant / Claimant has sustained crush injury on his right heel, which resulted into permanent disablement to the extent of 21%

as per the certificate issued by the Government Hospital in Form Comp. 'B', the Tribunal has awarded the *lump-sum* compensation of Rs.45,000/- towards loss of future income, by making departure from the usual method of applying multiplier. The learned counsel submits that the Tribunal has not awarded any compensation under the heads of pains and sufferings, attendant, transportation charges etc. The Tribunal has also not awarded the compensation separately for permanent disablement sustained by the Appellant / Claimant. The learned counsel submits that the Tribunal has also awarded the interest at the rate of 7.5% per annum instead of 9% per annum.

4 The learned counsel for Respondent / Insurer submits that the Appellant / Claimant has not examined the doctor, who has issued the said certificate of permanent disablement and as such, there is no expert opinion on record that the said permanent disablement has affected the earning capacity of the Appellant / Claimant to some extent. In absence of such positive evidence / expert opinion, the Tribunal has rightly made the departure from the usual method of applying the multiplier and awarded the *lump-sum* amount as a compensation. The learned counsel submits that the Tribunal has awarded just and reasonable compensation.

5 I have also heard the learned counsel for Respondent /
owner.

6 On perusal of the evidence and the judgment and award
passed by the Tribunal, it appears that though the Appellant / Claimant
has not examined the doctor who has issued the certificate in Form
Comp. 'B', the Tribunal has considered the said certificate in the light of
medico legal certificate and the discharge card issued by the S.R.T.R.
Medical College and Hospital Ambajogai. In absence of any expert
opinion as to how the said disablement has affected the earning
capacity of the Appellant / Claimant, the Tribunal has rightly made the
departure from the usual method of applying the multiplier and
awarded the *lump-sum* amount as a compensation under the head of
loss of future income. It further appears from the impugned judgment
and award that the Tribunal has not awarded separately the
compensation for pains and sufferings / loss of amenities in future life,
attendant charges and transportation charges. The Tribunal has also
not awarded any separate compensation under the head of permanent
disablement. So far as the compensation awarded for the medical
expenses are concerned, the Tribunal has awarded just and
reasonable compensation as per the receipt of the bills produced on
record.

7 In view of the above, the Appellant / Claimant is entitled for an amount of Rs.10,000/- for pains and sufferings. It is a part of record that the Appellant / Claimant has taken the treatment in the private hospital as well as S.R.T.R. Medical College and Hospital Ambajogai. He remained hospitalized for a considerable period. Thus, the Appellant / Claimant is entitled for an amount of Rs.10,000/- for attendant charges and Rs.10,000/- for transportation charges. The Appellant / Claimant is also entitled for an amount of Rs.10,000/- for having sustained permanent disablement.

8 In view of the above, the Appellant / Claimant is entitled for the total compensation of Rs.1,40,000/-. The impugned judgment and award passed by the Tribunal thus, requires modification to that extent. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed with costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Parbhani dated 15th October, 2016 in MACP No.212 of 2012, is hereby modified in the

following manner:

“Respondent Nos.2 and 3 are jointly and severally liable to pay the compensation to the tune of Rs.1,40,000/- (Rupees One Lac and Forty Thousand Only) (including NFL amount) to the petitioner with interest at the rate of 9% per annum from the date of petition till its realization”

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification.

VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]