

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 308 OF 2017

SANDEEP GANPATRAO GHORPADE
VERSUS
HUSAIN SK. MAHEBOOB PATHAN AND ANR

...
Advocate for Appellants : Mr. Gastgar Santosh B.
Advocate for Respondent No.2 : Mr. S.G. Chapalgaonkar
.....

CORAM : V. K. JADHAV, J.
DATED : 21st JUNE, 2017

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. Being aggrieved by the judgment and award dated 7.10.2016, passed by the learned Member, M.A.C.T. Latur in M.A.C.P. No. 230 of 2012, the appellant-original claimant has preferred this appeal to the extent of quantum.
3. Learned counsel for the appellant-claimant submits that the appellant claimant has sustained permanent disablement to the extent of 26% and the Tribunal has awarded only Rs.50,000/- towards permanent disablement. Witness Dr. Sudhakar Gulave has deposed before the Tribunal that the appellant claimant is suffering from reduced movements and deformity in the strength of ankle joint with foot on right side and also opined that impact of the said

disablement is on day to day activities of the patient. The Tribunal has awarded very meager amount of compensation of Rs.50,000/- for the said permanent disablement. Learned counsel submits that the earning capacity of the appellant-claimant is affected due to permanent disablement and the Tribunal ought to have awarded the compensation towards loss of future income.

4. Learned counsel for the respondent insurer submits that after considering the evidence on record, the Tribunal has awarded just and reasonable amount of compensation. No interference is required.

5. On careful perusal of evidence of Dr. Sudhakar Gulave, it appears that witness Dr. Gulave had admitted in the cross examination that he had taken X-ray and found that fractures are united. He has also admitted in the cross examination that the injuries sustained by the appellant was totally healed and that he had calculated permanent disablement limb wise. He has further given his opinion that the appellant claimant can do work as he was doing it earlier. Thus, the appellant-claimant is not entitled to claim the compensation under the head of loss of future income. However, considering to the age of the appellant -claimant and fact that the said permanent disablement, though limb-wise, reduced the

movement and strength of ankle joint with foot on right side, it would be just and proper if the compensation of Rs.75,000/- is awarded for the aforesaid permanent disablement instead of Rs.50,000/- as awarded by the Tribunal. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award dated 7.10.2016 passed by the learned Member, M.A.C.T. Latur in M.A.C.P. No. 230 of 2012 is hereby modified in the following manner:-

“The respondent Nos. 1 and 2, jointly and severally do pay the compensation of Rs.1,25,000/- (Rupees One lac twenty five thousand only) (inclusive of 'no fault liability' amount already paid, if any) to the appellant alongwith interest @ 9% p.a. from the date of filing of the petition till its realization.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. First appeal is accordingly disposed of.

(V. K. JADHAV, J.)