

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 304 OF 2017

GANESH BHAGWAT BALWAD
VERSUS
SHRIKRUSHNA BABASAHEB BHISE AND ORS

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Advocate for Appellant : Mr. S.B. Gastgar
Advocate for Respondent No.2 : Mr. R.P. Adgaonkar.
Advocate for Respondent No.3: Mr. S.S. Patil

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CORAM : V. K. JADHAV, J.
DATED : 17th JULY, 2017

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 28.9.2016 passed by the Member, M.A.C.T., Latur in M.A.C.P. No. 231 of 2012, the appellant original claimant has preferred this appeal.
3. Learned counsel for the appellant submits that the appellant claimant has sustained injuries on his right knee. The claimant is suffering from fracture of patella on right side with fracture of lateral condyle of femur with lateral condyle of tibia on right side. There are restricted movements of knee joint with reduced strength of right lower extremity. The appellant has examined two medical practitioners and both of them have deposed that the appellant

claimant is unable to work with previous efficiency. The appellant claimant was working in a private company on monthly salary of Rs.4000/-. However, the same is not considered by the Tribunal and awarded the lump sum compensation for the said permanent disability to the extent of 28.6% by making departure from regular course of applying multiplier method. Learned counsel submits that the Tribunal has also awarded very meager amount under the head of future medical expenses.

4. Learned counsel for the respondent insurer submits that the appellant claimant has sustained the said percentage of disablement limb wise and there is no functional disability as such. Learned counsel submits that both the doctors examined by the appellant claimant have admitted in their cross examination that the fractures sustained by the appellant-claimant are now united. Learned counsel submits that the Tribunal has therefore, rightly made departure from the multiplier method of awarding compensation and in the given set of facts, correctly awarded lump sum amount as compensation to the appellant-claimant for having sustained permanent disablement and its effects. Learned counsel submits that there is no evidence about the private employment and monthly income from the said job. The Tribunal has made observations to that effect in para 33 of the judgment. On the other hand, the

Tribunal has observed that the appellant-claimant was minor at the time of accident and as such there was no possibility to engage him as a labour in private company. Learned counsel submits that witness Dr. Tapdia has deposed that the approximate expenditure for removal of screw is Rs.15,000/- which includes medicines. In view of the same, the Tribunal has rightly awarded the compensation of Rs.15,000/- for future medical expenses. The Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal.

5. I have also heard learned counsel appearing for the respondent-owner.

6. On perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the appellant-claimant has sustained said permanent disablement limb wise. Both the witnesses i.e. Dr. Tapdia and Dr. Gulave, admitted in their cross examinations that all fractures mentioned in the disability certificate are now united. However, both of them have deposed about pains and restricted movements of knee joint with reduced strength of right lower extremity. The appellant claimant is young boy and as such the Tribunal should have awarded more amount under the head of permanent disablement. The appellant is entitled for Rs.75,000/- as

compensation for having sustained the permanent disablement and its effects. So far as the future medical expenses are concerned, it appears that witness Dr. Tapdia has opined that for removal of screws the appellant-claimant would require Rs.15,000/- which includes expenses of medicines. Learned counsel for the appellant-claimant however, on instructions, submits that said screws are not yet removed and compared to the costs in the year 2012 certainly some more amount is required for operation and other expenses, such as purchase of medicines, attendant, operation charges etc. In view of same, the appellant is entitled for an amount of Rs.35,000/- instead of Rs.25,000/- as awarded by the Tribunal.

7. In view of above, the compensation, as worked out by the Tribunal, requires re-determination on aforesaid two points. Thus, the appellant is entitled for total compensation of Rs.2,16,554/-. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with costs.
- II. The judgment and award dated 28.9.2016 passed by the Member, M.A.C.T., Latur in M.A.C.P. No. 231 of 2012 is hereby modified in the following manner:-

“Respondent No.3 do pay compensation of Rs.2,16,554.00 (Rupees Two lacs sixteen thousand five hundred fifty four only) (inclusive of NFL amount already paid, if any) to the claimant alongwith interest @ 9% per annum from the date of filing of the petition i.e. 3.9.2012 till its realization.”

- III. Rest of the judgment and award stands confirmed.
- IV. The 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. First appeal is accordingly disposed of.

(V. K. JADHAV, J.)