

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 244 OF 2017  
WITH CA/13854/2016 IN FA/244/2017

RELIANCE GENERAL INSURANCE CO.  
VERSUS  
ASHOK GOPALRAO PATIL AND ANR

...  
Advocate for Appellant : Mr. Dahat Rohit H and Mr. S.S. Patil  
Advocate for Respondents : Mr. S.S. Kulkarni h/f K.M. Nagarkar  
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**CORAM : V. K. JADHAV, J.**  
**DATED : 28<sup>th</sup> JUNE, 2017**

**PER COURT:-**

1. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 5.3.2016 passed by the Member, M.A.C.T. Bhokar, in M.A.C.P. No. 353 of 2010, the original respondent No.2 insurer has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal and rate of interest.
3. Learned counsel for the appellant insurer submits that the respondent claimant has not examined doctor, who has issued permanent disablement certificate Exh.30 and the Tribunal has considered the said certificate. In the certificate which in Form Comp. "B" Exh.30, only the percentage of permanent disablement is

mentioned and there is no functional disability, as such. Thus, the Tribunal has erroneously considered the said percentage of disablement as a loss of earning capacity and determined the compensation. The Tribunal has also awarded the interest at higher rate of 12% p.a. instead of 9% p.a..

4. Learned counsel for the respondent original claimant submits that in permanent disablement certificate Exh.30 which is in Form Comp. "B", the Medical Officer of the Government Hospital has mentioned that the permanent disablement is to the extent of 40% and the respondent claimant Ashok could not walk and run normally and unable to perform the agricultural/labour work. Even the Tribunal has also observed in para 14 of the judgment that when the claimant appeared before the court, the claimant was unable to walk and as such one can ascertain pains and sufferings of the claimant. Learned counsel submits that the Tribunal has therefore rightly taken into consideration same percentage of disablement as a loss of earning capacity and awarded just and reasonable compensation. The tribunal has awarded compensation with interest @ 12% p.a. and the same is just and proper in view of the facts and circumstances of the case.

5. On careful perusal of the contents of permanent disablement

certificate Exh.30, which is in Form Comp. B, issued by the Medical Officer, Government Medical College, Nanded, it appears that the concerned Medical Officer, who has issued the said certificate has observed that the respondent claimant Ashok is suffering from compound of Tibia and Fibula L/4, right leg CLW over right leg (10x8x3) cm and as such permanent disablement is to the extent of 40%. It has been specifically mentioned in the said certificate Exh.30 that respondent claimant Ashok could not walk and run normally and unable to perform agriculture/labour work. The claimant is agriculturist by occupation and taking into account the said permanent disablement certificate Exh.30, the Tribunal has considered the same and accordingly awarded just and reasonable compensation. I do not find any fault in the finding recorded by the Tribunal and the Tribunal has correctly worked out the compensation in the light of permanent disablement certificate Exh.30.

6. So far as the rate of interest as awarded by the Tribunal is concerned, the same is on higher side. The respondent is entitled for the interest at the rate of 9% p.a. from the date of filing of petition till its realization.

7. In view of above discussion, the impugned judgment and award requires modification. Hence, I proceed to pass the following

order:-

## O R D E R

- I. The appeal is hereby partly allowed. No costs.
- II. The impugned judgment and award dated 05.03.2016 passed by the Member, M.A.C.T. Bhokar in M.A.C.P. No. 353 of 2010, is modified in the following manner:-

“The claimants are entitled for compensation of Rs.2,50,000/- (Rupees two lacs fifty thousand), (as worked out by the Tribunal) with interest @ 9% p.a. from the date of filing of petition till its realization.”

- III. Rest of the judgment and award passed by the Tribunal stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. The amount deposited before this Court shall be transferred to the Tribunal and respondent-claimant is permitted to withdraw the said amount as per the modified award and

amount in excess, if any, shall be refunded to the appellant-insurer.

V. The appeal is accordingly disposed of.

VI. Pending civil application is also disposed of.

**( V. K. JADHAV, J.)**

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