

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

21 FIRST APPEAL NO. 607 OF 2017

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED
VERSUS
GANESH BHIMRAJ HON AND ANOTHER

...

Advocate for Appellant : Mr. S. G. Chapalgaonkar.

Advocate for Respondent No.1 : Mr. Shaikh Mazhar A. Jahagirdar.

...

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

DATE : 03rd July, 2017.

JUDGMENT:

. Head 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, Shrirampur, District Ahmednagar dated 5th April, 2016 in MACP No.61 of 2014, original Respondent No.2 / Insurer has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

3 The learned counsel for Appellant / Insurer submits that PW-2 Dr. Murade is not the treating doctor and Respondent / original Claimant has obtained permanent disablement certificate Exhibit 31 from Dr. Murade. PW-2 Dr. Murade has specified in the said certificate Exhibit 31 that Respondent / original Claimant has sustained

permanent disablement to the extent of 35%. The learned counsel submits that so far as the nature of injuries as sustained by the Claimant is concerned, the permanent disability is only to the extent of 12% and not more than that. The learned counsel submits that there is no evidence regarding the income of Respondent / Claimant from his business. However, the Tribunal has considered his monthly income at Rs.4,000/-. Even assuming that the Claimant is dealing in the business of sale and purchase of old tractors, the permanent disablement as specified by PW-2 Dr. Murade in his permanent disablement certificate Exhibit 31 hardly affects the earning capacity of the Claimant. However, the Tribunal has considered the same percentage of the disablement as the percentage affecting the earning capacity of the Appellant / Claimant and awarded the exorbitant amount of compensation.

4 The learned counsel for Respondent / original Claimant submits that though Dr. Murade is not a treating doctor, he is a consulting orthopedic surgeon having a degree of M.S. Ortho. and practicing at Shrirampur, District Ahmednagar. The Claimant is also hailing from village Kadit, Taluka Shrirampur, District Ahmednagar. PW-2 Dr. Murade has explained that the Claimant has disability of 35% following the fracture metatarsal left side and further opined that

the Claimant would not be able to do his trade work as he was doing prior to the accident and his earning capacity is affected due to the said permanent disability. The learned counsel submits that considering the age of the Claimant and his business, the Tribunal has rightly considered his income at Rs.4,000/- per month and further awarded the compensation in the same percentage of his permanent disablement. The Tribunal has awarded just and reasonable compensation. There is no substance in the appeal and the appeal is thus, liable to be dismissed.

5 On careful perusal of the pleadings, evidence and impugned judgment and award passed by the Tribunal, it appears that immediately after the accident, the Claimant was shifted to Pravara Hospital, Loni where he was treated as indoor patient for a considerable period. On perusal of the injury certificate issued by the said hospital, which is marked as Exhibit 35, it appears that the Claimant has sustained swelling and fracture injury over the left foot and the nature of injuries is shown as grievous injuries. It further appears from the said certificate Exhibit 35 that the X-ray indicates that there is a fracture injury on first and second metatarsal left side. On careful perusal of the permanent disablement certificate Exhibit 31 and the oral evidence of Dr. Murade, it appears that Dr. Murade has issued

the said certificate in consonance with the certificate issued by Pravara Hospital Exhibit 35. Even though Dr. Murade is not a treating doctor, he is a consulting orthopedic surgeon and there is nothing in his cross-examination to discard his expert opinion. His evidence cannot be discarded only on the count that he was not a treating doctor. He was suggested during the cross-examination that the Claimant sustained permanent disablement to the extent of 12% as per the medical manual, however, the said manual was not shown to the witness. Further, one government circular of 2012 was referred to demonstrate that the Dr. Murade is not empowered to issue such type of certificate. However, the said government circular is also not placed on record. The learned Members of the Tribunal should take a note that whenever any medical manual or the government circular referred in the cross-examination, as in the present case, unless the same is produced on record, such questions in cross-examination shall not be permitted. PW-2 Dr. Murade has opined that the Claimant would not be in a position to do his trade work as he was doing prior to the accident and his earning capacity is affected due to the said permanent disability. In view of the said expert opinion, the Tribunal has rightly considered the percentage of permanent disablement as a percentage of affecting the earning capacity of the Claimant and

accordingly, awarded the compensation. Even the Tribunal has considered the income of the Claimant equivalent to a labour though the Claimant is dealing in the business of sale and purchase of old tractors. It appears that the learned Member of the Tribunal has awarded just and reasonable compensation. No interference is required. There is no substance in the appeal. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. If any amount is deposited before this Court, the Claimants are permitted to withdraw the same.
- III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm