

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3883 OF 2016

RAVIRAJ @ RAVINDRA VAIJINATH GAVATE
VERSUS
KAMALBAI LAKHIMICHAND KOTECHA AND ANR

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Advocate for Appellant : Mr. Manoj Shinde h/f Mr. S.S. Dambe
Advocate for Respondent No.1: Mr. P.M. Shinde
Advocate for Respondent No.2 : Mr. S.R. Bagal

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CORAM : V. K. JADHAV, J.
DATED : 16th JANUARY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 2.9.2015 passed by the Member, M.A.C.T. Beed in M.A.C.P. No. 107 of 2011, the appellant original claimant has preferred this first appeal to the extent of quantum.

2. There is no dispute that on 25.9.2000 when the appellant was returning from Pune to Beed, in the vicinity of village Supa, on account of rash and negligent driving of the driver of jeep bearing registration No. MH-23-E-1303, the accident occurred and the applicant-claimant has sustained injuries, which resulted into permanent disablement to the extent of 10%. This appeal has been preferred to the extent of quantum.

3. Learned counsel for the appellant claimant submits that though the appellant claimant has sustained disablement to the extent of 10%, the learned Member of the Tribunal has not awarded any compensation for loss of future income by applying the multiplier. The Tribunal has also not awarded the compensation under non pecuniary heads, such as loss of amenities in future life etc. The claimant is contractor and agriculturist by occupation and on account of disablement sustained by him, he is unable to perform his day to day activities, as could be done effectively before the accident. After the accident, he was shifted to various hospitals and he undergone two operations. Learned counsel submits that the Tribunal has not awarded just and reasonable compensation considering the income, nature of disablement and future loss of income.

4. Learned counsel for the respondent insurer submits that the Tribunal has awarded just and reasonable compensation considering the disablement sustained by the appellant-claimant to the extent of 10%. Learned counsel submits that even the appellant claimant has admitted in his cross examination that even after the accident, he is doing his job of contractor-ship and agriculturist. There is no loss in future income as observed by the Tribunal. The Tribunal has awarded medical expenses, travelling expenses, pains and sufferings and future medical expenses, conveyance, travelling

expenses etc. No interference is required in the impugned judgment and award.

5. On careful perusal of impugned judgment and award and the record and proceedings, it appears that the appellant claimant has examined witness No.2 Dr. Pramod Shinde. According to the said witness, the claimant has sustained fracture to right femur and fracture of radius ulna of left forearm with restricted right knee and left wrist. He has thus assessed the permanent disablement to the extent of 10%, certified in FORM Comp-B, which is marked at Exh.34. In his cross examination, he has opined that this disability affects the leg and hand and disablement cannot be reduced by providing treatment in future. Witness No.2 Dr. Shinde has further avoided to give his clear opinion whether the said disablement affects the day to day activities of the claimant. It further appears from the examination-in-chief of the said witness that even the claimant has not put to this witness his occupation and obtained his opinion about the said disablement affecting his day to day activities.

6. Apart from this, the appellant claimant is contractor and agriculturist by occupation. Though Dr. Shinde has deposed that the because of disablement, the long standing day to day work of the claimant affects, however, the nature of work, which the claimant

used to do, generally does not require standing position for hours together. The appellant claimant has not come with evidence that he is personally cultivating the agricultural land. So far as the business of contractor-ship is concerned, such business is always executed by supervising the work. However, the learned Member of the Tribunal ought to have granted compensation in lump-sum on account of permanent disablement sustained by the claimant though the application of multiplier method is not required in the given set of facts. In view of the above, it would be just and reasonable if claimant is awarded lump-sum amount of Rs.25,000/- more towards permanent disablement sustained by him which is in the form of restriction to the movement of right knee and the left wrist. Accordingly, I proceed to pass the following order:-

O R D E R

- I. The judgment and award passed by the M.A.C.T. Beed dated 2.9.2015 in M.A.C.P. No. 107 of 2011 is modified in the following manner:-

“The respondent Nos. 1 and 2, jointly and severally pay total compensation of Rs.1,56,333/- (Rupees One lac fifty six thousand three hundred thirty three only) inclusive of “no fault liability” alongwith interest at the rate of 9% p.a. from

the date of application till realization of entire amount.

II. Rest of the judgment and award stands confirmed.

III. Award be drawn up as per the modification.

IV. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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