

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

204 FIRST APPEAL NO. 504 OF 2002
WITH CA/3403/2002 IN FA/504/2002 WITH CA/7261/2002 IN
FA/504/2002

1. United India Insurance Co.Ltd.,
Ahmednagar, At. & Dist.Ahmednagar
Through its Divisional Manager,
authorized representative and signatory,
Ahmednagar Division, Kisan Kranti
Building, Ahmednagar, Dist.Ahmednagar.

VERSUS

1. Bhaskar Gopinath Barhate
Age: 37 years, Occu.: Service,
R/o.Rajeshwar Housing Society,
Hodshil Sir Bugalow,
Rahuri Khuda, Tal.Rahuri,
District-Ahmednagar.
2. Subhash G.Kotasthane
Age: Major, Occu.: —
R/o.10/85, Meghali Society Ltd.,
Domale Path, Erandavane, Pune 4.

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Advocate for Appellant : Mr.A.B.Gatne

Advocate for Respondent No.1 : Mr.S.B.Gorde Patil
(absent)

Advocate for Respondent No.2 : Mr.L.B.Pallod (absent)

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CORAM : M.S.SONAK, J.

DATE : 29.1.2018

ORAL JUDGMENT:-

1) Heard Mr.A.B.Gatne learned counsel for the appellant.

2) The challenge in this appeal is to the Judgment and award dated 25.2.2002 by which the Motor Accident Claims Tribunal, Ahmednagar, has awarded the respondents compensation of Rs.2,00,000/- together with interest @ 9% p.a. from the date of application until satisfaction of the entire claim.

3) Mr.Gatne submits that in this case the disability is reported to be only 13%. He submits that there is evidence on record that all medical expenses were already reimbursed to the respondent/claimant by his employer. He points out that in these circumstances, the entire claimed amount i.e. Rs.2,00,000/- by way of compensation is grossly excessive and un-sustainable. Mr.Gatne points out that Doctor who actually treated the claimant has

never examined and some other Doctor was examined, who has issued issued the disability certificate.

4) The respondents though served neither present nor represented.

5) The material on record does indicate that all the medical expenses were reimbursed to the claimants and therefore, the Motor Accident Claims Tribunal has not made any award in respect of the same. The medical certificate produced on record also indicates 13% permanent disability. There is evidence on record to the effect that the respondent/claimant had to undergo two operations as he sustained fractures to his right leg. He has deposed that he had hired a private motor vehicle to attend Sancheti Hospital. He has to take special diet while in the hospital. There is also evidence that certain implants had been placed in or order to met the fractures, but the claimant has not turned up for further

surgery to remove the implants.

6) Upon perusal of the entire evidence on record, it does appear that the compensation awarded by the Motor Accident Claims Tribunal is on higher side. On the facts and circumstances of the present case, considering the nature of injury as well as the pain and suffering, which claimants must have gone through on account of accident, an amount of Rs.50,000/- could have been awarded under this head. Towards disability of 13% and the inconvenience occurred to the claimant, who has stated to be a Research Officer, compensation of further Rs.50,000/- could have been awarded. It takes total compensation to Rs.1,00,000/-

7) Even upon taking a liberal view of the matter and awarding the compensation towards hiring of private vehicle, attendant charges, special diet and such other matters, the compensation of Rs.50,000/- could have been

awarded to the respondent/claimant. It takes total compensation amount to Rs.1,50,000/-, which will be the maximum that could have been awarded to the respondent/claimant.

8) The impugned award to the extent of awarding compensation of Rs.2,00,000/- is therefore, liable to be interfered with and the compensation amount to be reduced to Rs.1,50,000/-. Accordingly, the impugned award is modified and compensation is reduced from Rs.2,00,000/- to Rs.1,50,000/-.

9) The respondent/claimant has already withdrawn the compensation amount of Rs.2,00,000/- by furnishing solvent security. Apart from this, the respondent/claimant has already withdrawn Rs.25,000/- towards no fault liability. Therefore, the respondent/claimant is directed to deposit in this Court, within a period of eight weeks from today, a sum of Rs.75,000/- together

with interest @ 9% p.a. from the date such amount was withdrawn till the date of deposit. If this is not done, the appellant shall entitle to execute this order.

10) It is clarified that in case any interest amount is due and payable to the respondent/claimant, then the same shall be calculated @ 9% p.a. on now modified amount of Rs.1,50,000/-. The respondent/claimant make adjustments in so far as this amount is concerned.

11) The appeal is partly allowed in the aforesaid terms.

12) As the appeal is disposed of, pending civil applications do not survive and are disposed of.

13) There shall be no order as to costs.

[M.S.SONAK, J.]