

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 61 OF 2013

M/s National Insurance Co. Ltd.

Appellant

Versus

Bharat s/o Kerba Paphal
& another

Respondents

Mr. V.N. Upadhye, advocate for appellant.

Mr. P.K. Ippar, advocate holding for Mr. S.J. Salunke, advocate for respondent no. 2.

CORAM : M.S. SONAK, J.

DATE : 16th JANUARY, 2018

PER COURT:

1. Heard learned counsel for the parties.
2. Mr. Upadhye, learned counsel for appellant submits that the evidence on record at the highest indicates that the claimant suffered permanent disability to the extent of 65% only. It means that the claimant was not in a position to undertake atleast some vocations and earn his livelihood. The impugned award proceeds on the basis that claimant was unable to earn anything whatsoever and, has determined compensation on such erroneous basis.
3. Mr. Upadhye further submits that compensation awarded towards pain and sufferings, loss of amenities, dis-figuration and prospects of marriage is also quite excessive. He submits that there is really no proper evidence lead to substantiate any award

insofar as, compensation under these headings is concerned. Mr. Upadhye submits that compensation under these headings is required to be deducted.

4. Mr. Ippar, learned counsel for respondent-claimant submits that, claimant was employed in a flour mill in which, as of necessity, he was required to stand and use his legs. He points out that claimant's right leg below knee has been amputated and therefore, he is unable to work in flour mill. He points out that claimant is having no particular qualification or vocational skill and therefore, he will not be in a position to obtain any good employment. He points out that the MACT has infact awarded less compensation towards non-pecuniary losses. He points out that the claimant, throughout his life, will have to suffer on account of amputation of one of his legs and the treatment which is required. Taking all this into consideration, learned counsel Mr. Ippar submits that the compensation awarded is infact, to the lessor side which therefore, may not be upset by this Court.

5. Evidence on record which is virtually unchallenged establishes that claimant has suffered permanent disability to the extent of 65%. There is absolutely no reason to interfere with this evidence. There is also evidence on record that the claimant was working in the flour mill and, as a result of the accident involving motor vehicle, his right leg below the knee was amputated. Evidence on record indicates that claimant is unable to work in the flour mill as the work in the flour mill involves moving the wheel by his right leg. Such movement of the right leg is essential for shifting livers of the mill in accordance with the grains used for the

purpose of grinding.

6. The MACT has taken income of the claimant at Rs. 4,500/- per month which is quite reasonable. Infact, the evidence on record indicates that at the time of accident, he was earning income of Rs. 2,500/- per month. However, there is no dispute that claimant was 29 years of age when the accident took place. This means that there has to be an addition towards future prospects. Taking that into consideration, there is no infirmity in taking income at Rs. 4,500/- per month.

7. The tribunal has determined compensation towards pain and sufferings, loss of amenities, dis-figuration and prospects of marriage on quite conservative basis. it is to be noted that claimant is required to live all his life on the basis of amputation of his right leg. For this loss, some compensation is due and since, what whatever has been awarded is quite reasonable. There is really no case made out to interfere in the impugned award.

8. For aforesaid reasons, appeal is dismissed. There shall be no order as to costs.

9. Pending civil application if any, does not survive and stands disposed of.

(M.S. SONAK, J.)