

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.F. NO.1907/2019
IN
FIRST APPEAL STAMP NO.22660/2018

Vijay S/o Mahadeo Harne

..Vs..

Dhaneshwar S/o Gulabrao Pawade and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.H. Pathade, Advocate h/f Shri P.S. Mirache, Advocate for the
appellant.

CORAM : NITIN W. SAMBRE, J.

DATED : 16.9.2019

1] Heard.

2] There is a delay of 183 days caused in preferring the present appeal. Same is condoned. Civil application is **allowed** accordingly. The appeal is taken up for admission.

3] The submissions are once doctor has certified the disability to the extent of 15%, the Tribunal has committed an error in considering 7% complete body disability for the purpose of amount of compensation. The learned Counsel relied upon the evidence of the doctor who has issued disability certificate. The learned Counsel for the appellant has invited attention of this Court to the nature of injuries suffered, loss of earning etc. so as to claim that the prayer for enhanced

compensation needs consideration.

4] Considered the submissions.

5] The appellant has not examined doctor who has actually treated and operated him after the accident in question but has examined Dr. Rajesh Sawarbandhe under whom he was taking treatment post operation and who has issued disability certificate certifying 15% of the disability. The said doctor, who was examined on commission, has deposed that the appellant was having history of accident and operation of right tibia and was having a shortening of right lower limb with swelling at fracture site. On June 2, 2011 i.e. almost after a period of more than 2 years of the operation a certificate of disability to the extent of 15% was issued to the appellant.

6] The Tribunal while dealing with 15% permanent disability was sensitive of the law laid down by the Apex Court in the matter of Rajkumar V/s. Ajaykumar reported in **2011(1) TAC 785 (SC)** and assumed that whole body disability in the case in hand could be considered to be 7%.

7] The Tribunal considered the income of the appellant to the extent of Rs.3,000/- per month as he has not produced any documentary evidence to prove his claim on higher side and proceeded to award total

compensation of Rs.82,344/- with other benefits.

8] The Tribunal has considered the hospitalization charges to the tune of Rs.18,450/-, X-ray and other charges to the tune of Rs.7,600/-, medicine charges to the tune of Rs.27,144/-, travel and special diet charges Rs.5,000/- and Rs.1,650/- towards loss of earning of the dependent.

9] As such the Tribunal has assessed the entitlement of the appellant under all heads and has reached to a conclusion of awarding compensation after minutely scrutinizing documentary and oral evidence on record.

10] In the aforesaid background, claim of the appellant that though there is permanent disability of 15% for the purpose of awarding compensation only 7% disability is considered, will be of hardly any consequence.

11] In the aforesaid background, no case is made out for interference. The appeal fails. It is **dismissed** accordingly. No costs.

JUDGE