

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

**934 FIRST APPEAL NO.793 OF 2015
WITH CA/2725/2015 IN FA/793/2015**

**NEW INDIA ASSURANCE CO. LTD. THR ITS BRANCH MANAGER
VERSUS
SAMIR DILAWARSHAIKH AND ANOTHER**

Shri. D. P. Deshpande, Advocate for the appellant
Shri. Tejas Bedre, Advocate h/f Shri. V. S. Bedre, Advocate for respondent
No. 1.

CORAM : M. G. SEWLIKAR, J.

DATED : 09-02-2021

P.C. :-

. Heard learned counsel Shri. Deshpande for the appellant and
Shri. Bedre, learned counsel for respondent No. 1.

2. Learned counsel Shri. Deshpande submitted that he does not dispute the accident and the percentage of injury the claimant has suffered. He submitted that the accident took place when the offending truck involved in the accident was coming in reverse direction and the claimant who was riding the motorcycle dashed against the offending truck. He submitted that the Insurance Company admitted the accident and also did not dispute the percentage of injury sustained by the claimant. He submitted that the learned Tribunal calculated the amount of compensation on the basis of percentage of injury and not on the basis of loss of income. He submitted that the Tribunal calculated the amount of compensation on the basis of 20% of the disability. The claimant has not adduced any evidence to show as to what was the loss of income because of the disability sustained by the claimant on account of the accident. He

submitted that he does not dispute the medical expenses incurred by the claimant, the amount awarded on account of special diet and amount awarded on other heads. He submitted that the Tribunal committed grave error in assessing the compensation on the basis of percentage of disability.

3. Learned counsel Shri. Bedre submitted that the claimant sustained fracture to his left wrist. The opinion of the Medical Officer is that the claimant has restricted movements. Therefore, the claimant was not in a position to pursue education of his choice. He further submitted that because of the disability the performance of the petitioner in the exams suffered a great set back. He, therefore, submitted that the compensation awarded is adequate and no interference by this Court is necessary.

4. Amount of compensation has to be calculated not on the basis of percentage of disability but on the loss of income the claimant/injured has suffered on account of the disability. There can be instances where disability is minimal but loss of income can be 100%. In the case at hand the disability is 20% but there is no evidence as to what is the loss of income. Learned counsel Shri. Deshpande submitted that the Tribunal could have awarded compensation at the most to tune of Rs. 1,50,000/-. Shri. Bedre, learned counsel submitted that this amount is too meager considering the percentage of disability.

5. Having regard to the percentage of disability and the absence of evidence of loss of income I deem it fit to reduce the amount of compensation to Rs. 1,50,000/-. Accordingly award is modified. The appellant and the owner shall jointly or severally pay Rs. 1,50,00/- with

interest at the rate of 9% per annum from the date of petition till realization of the entire amount. The amount withdrawn by the claimant in this Court and in the Tribunal be deducted while making the payment to the claimant.

6. Amount of compensation withdrawn by the claimant in this Court and in the Tribunal and amount of compensation on account of no fault liability if withdrawn, shall be deducted from Rs. 1,50,000/- and be paid to the respondent No.1. Remaining amount be refunded to the appellant. Registrar (Judicial) to make the calculations in this regard.

7. With these observations appeal is disposed of.

8. All the pending civil applications stand disposed of.

[M. G. SEWLIKAR, J.]

ssp