

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11468 OF 2021 IN
CROSS OBJECTION ST. NO.15648 OF 2019 IN
FIRST APPEAL NO.1814 OF 2018

Shafi @ Shafik s/o Shanur Shaikh ... APPLICANT

VERSUS

Salim s/o Salamat Pathan & anr. ... RESPONDENTS

.....
Mr. Fayaz K. Patel, Advocate for applicant
Mr. S.G. Chapalgaonkar, Advocate for respondent No.1.
Mr. S.C. Swami, Advocate for respondent No.2.
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CORAM : R. G. AVACHAT, J.

DATE : 20th OCTOBER, 2021

ORDER :

This application has been moved for modification of the order passed in Cross-Objection in First Appeal No.1814/2018. Vide judgment and order dated 31/8/2021, this Court dismissed both the First Appeal and the Cross Objection as well. The First Appeal was preferred by the Insurance Company, taking exception to the judgment and award granting compensation. While the Cross-Objection was preferred for enhancement of the compensation. This Court,

while dismissing the Cross-Objection, observed in paragraph No.12 of the judgment thus :

“There is, however, no concrete evidence to suggest that Shafik required further medical treatment and expected expenditure therefor. Although he could not drive any longer, he can undertake any other work to earn his living. This Court is, therefore, of the view that, the amount of compensation granted by the Tribunal is just and reasonable, requiring no enhancement therein.”

2. This Court was reminded by the learned counsel for the original claimant Shafi @ Shafik that, this Court had expressed its mind to grant compensation on account of future prospects.

3. The Tribunal had awarded compensation considering his notional income at Rs.5000/- per month, although he suffered 35% disability, the Tribunal found it to be 100% functional disability. This Court has confirmed the said finding. The applicant was a professional driver. He suffered elbow injury i.e. elbow stiffness M 70⁰ etc. He is no longer able to drive. As such, it is a case of 100% functional

disability. He had, therefore, to cancel his driving licence. As such, in view of this Court, the claimant Shafik is entitled to have compensation on account of future prospects as well.

4. The deceased was said to be 36 years of age when he met with the accident. He appears to have not been in permanent job. He would, therefore, be entitled to have addition of 40% of his established income for grant of compensation on account of future prospects.

5. The learned counsel for the Insurance Company urged that, if the Court grants compensation on account of future prospects, the claimant need not be awarded interest thereon. The submission is stated to be not acceptable since the compensation on account of future prospects is the part and parcel of basic compensation to be granted on account of loss of dependency in case of death of a victim of the accident or in case of a victim suffering 100% of functional disability.

6. In view of the above, the Civil Application is allowed. The judgment and order dated 31/8/2021 passed in First Appeal No.1814/2018 with Cross-Objection Stamp No.15648/2019 is modified as under :

7. The amount of compensation granted by the Tribunal to the applicant Shafi @ Shafik be re-worked out, making addition of 40% of his monthly income towards future prospects. Rest of the terms of impugned award to stand unaltered.

**(R. G. AVACHAT)
JUDGE**

fmp/-