

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2625 OF 2010

Chandrakant S/o Mahadeoappa Garde,
 Age-41 years, Occu: Trade as M/s. Garde
 & Sons Grossary Shop (Retail & Whole-sale
 Distributors of various products),
 Osmanabad, Tq. & Dist-Osmanabad

...APPELLANT
(Orig. Claimant)

VERSUS

- 1) Mr. Kiritkumar V. Amin,
 Age-Major, Occu:Business,
 R/o-102-c, Swaroop Nagar,
 Boisar, Dist-Thane,
 Owner of Truck No. MH-04/BG-586,
- 2) United India Insurance Co. Ltd., Thane,
 Through the Branch Manager,
 United India Insurance Co. Ltd.,
 Near S.T. Stand, Osmanabad,
 Insurance Policy No. 31/02/3191
 Validity:22-1-03 to 21-1-2004
 Insurer of Truck No. MH-04/BG-586,
- 3) Maharashtra State Road Transport
 Corporation, Vahatuk Bhavan, Mumbai,
 Through the Divisional Controller,
 M.S.R.T.C., Osmanabad

...RESPONDENTS

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Mr.R.V. Naiknavare Advocate for Appellant.
 None present for Respondent No. 1 though served.
 Mr.S.S. Rathi Advocate for Respondent No. 2.
 Mr.D.S. Bagul and Mr.B.B. Yenge Advocate for Respondent No. 3.

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CORAM: ANIL S. KILOR, J.

DATE : 23rd MARCH, 2021

ORAL JUDGMENT :

1. This is an appeal filed by the claimant in motor accident claim for enhancement in compensation granted by the Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No. 82 of 2005.

2. I have heard the learned counsel for respective parties.

3. The brief facts of the present case are that, the appellant / claimant while travelling by S.T. bus, because of rash and negligent driving of the driver of the said bus, it gave dash to a truck and in the said accident the claimant sustained grievous injuries to his right arm, right hand shaft humerus and other injuries. He also sustained fracture of right hand elbow and injury to shoulder. Accordingly, he filed claim petition for Rs.3,00,000/- under Section 166 of the Motor Vehicles Act.

4. The learned Tribunal, after considering the oral as well as documentary evidence led by the claimant, granted Rs.1,15,200/- towards total compensation to be paid jointly and severally by respondents No. 1, 2 and 3 along with interest at the rate of 7.5% from the date of filing of petition till the realization of amount.

5. The learned Tribunal, while granting the compensation did not pay any amount towards loss of business, which gave cause to the claimant to file present appeal and seek enhancement of compensation on the ground of loss of business.

6. Shri Naiknavare, learned counsel for the appellant submits that it has come in the evidence that from 1st October 2003 to 16th July 2004 the claimant was not in a position to go and do the work in his grocery shop because of accident and therefore, he did not attend his business for the said period. It is submitted that in view of the said undisputed fact the learned Tribunal ought to have granted compensation towards the loss of business which the learned Tribunal failed to grant and therefore he prays for allowing the present appeal and grant Rs.25,000/-

per month as compensation for the above referred period towards loss of business.

7. Shri Rathi, learned counsel appearing for Respondent No. 2 – insurance company strongly opposed the present appeal and submits that in absence of any evidence led by the claimant to establish loss of business, the learned Tribunal has rightly rejected the said claim of the claimant. By arguing so, he prays for dismissal of the present appeal.

8. To consider rival contentions of the parties, I have gone through the record and proceedings of the Tribunal and also the Judgment of the Tribunal.

9. The learned Tribunal, while considering the case of the claimant for loss of business during the period from 1st October 2003 to 16th July 2004, has observed in the Judgment that the appellant has not produced any evidence to show that behind his back the shop was closed and there was no business and the claimant suffered losses in his business.

10. The record does not support the case of the appellant. When it is the case of the appellant that there was a loss of business because he could not attend the business from 1st October 2003 to 16th July 2004, the duty is casted upon him to prove and establish the said fact by leading necessary evidence documentary as well as oral. Undisputedly in the present matter, no such evidence was led by the appellant and therefore, I do not find any error committed by the learned Tribunal in not granting any amount towards loss of business, to the appellant in the present matter.

11. Accordingly, I find no merit in the present appeal and hence pass the following order:-

ORDER

(I) First Appeal is dismissed.

(II) No order as to costs.

[ANIL S. KILOR, J.]