
(2016) 04 BOM CK 0032
In the Bombay High Court
Case No : First Appeal No. 06 of 2016.

Ashok Baliramji Bramhne

APPELLANT

Vs

Sudhir Baburao Landge and Others

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 3 ALLMR 360 : (2016) 5 BCR 792 : (2016) 4 MhLJ 370

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : S.R. Charpe, Advocate, for the Appellant; B. Lahiri, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J. Oral - On 05.01.2016, this Court issued notice for final disposal of the matter. The Respondents are served. Shri B. Lahiri, the learned counsel appears for respondent No. 3. None appeared for other respondents.

In view of the fact that the notice for final disposal of the matter was issued, it is not necessary to issue fresh notice to the Respondents who are not present before this Court.

Hence, Admit.

1. The learned counsel appearing for Respondent No. 3 waives service of notice.

Heard the learned counsels appearing for the parties.

2. In M.A.C.P. No. 243 of 2012, decided on 20.08.2015, the Motor Accident Claims Tribunal, Amravati, has directed payment of compensation of Rs. 72,400/, inclusive of "no fault liability" along with interest at the rate of 8% per annum from the date of filing of the petition till its realization, on account of disability which the claimant is said to have suffered as a result of an accident in question which occurred on 22.03.2012. The claimant is before this Court claiming

enhancement of compensation on the ground that the permanent disability suffered by him was to the extent of 50% and accordingly, he is entitled to get compensation.

3. The Tribunal has held that the claimant has neither produced any document on record nor examined Dr. Belsare to prove the disability certificate placed on record as Article "A". But taking into consideration the injury certificates at Exh. 27 and 36 and the present physical condition of the claimant, it is held that at the most it can be said that the claimant has suffered physical disability to the extent of 10% only. On the basis of this, the calculations of compensation has been done.

4. Shri Charpe, the learned counsel appearing for the claimant has urged that the claimant could not examine Dr. Belsare for the reason that he was not well during the pendency of the trial and subsequently he expired and therefore, the certificate of permanent disability placed on record as Article "A" could not be proved. He further submits that the claimant should be given an opportunity to prove the permanent disability to the extent of 50% by examining the doctors and producing on record the other material.

5. The point for determination is,; Whether the matter should be remanded back to the Tribunal for redetermination by affording an opportunity to the claimant to prove the permanent physical disability to the extent of 50%?

6. Two questions need to be addressed by the Tribunal

1] Whether the claimant proved the permanent disability to the extent of 50%? and

2] Whether the permanent disability is suffered by him, was as a result of the accident occurred on 22.03.2012?

7. On the first aspect, as pointed out by the learned counsel for the appellantclaimant, Dr. Belsare could not be examined. If the claimant proposes to examine the Doctors who treated him after the accident in question, the ends of justice would meet by permitting him to produce on record the evidence of permanent disability. The second aspect of connection of permanent disability with the accident in question has not been gone into by the tribunal. Accordingly the Tribunal is required to frame such issue so that the parties can lead evidence in support of their rival contentions. The matter can be remanded back to the Tribunal for its re-decision in accordance with law.

8. In the result, the first appeal is allowed. The judgment and order dated 20.08.2015 passed by the Motor Accident Claims Tribunal, Amravati, in Motor Accident Claim Petition No. 243 of 2012 is hereby quashed and set aside. The matte is remitted back to the Tribunal to decide it afresh in the light of the observations made by this Court after affording the parties concerned an opportunity to lead evidence in support of their rival stand. The parties to appear before the Tribunal on 13.06.2016. R and P be sent back immediately to the

Tribunal. No order as to costs.