

(2013) 03 AHC CK 0061
In the Allahabad High Court
Case No : F.A.F.O. No. 663 of 2013

Shyam Babu Mishra @ Jitendra Kumar Mishra	APPELLANT
Vs	
Neeraj Kela and Another	RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2013) 2 AWC 1703

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Prem Shankar Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—Heard counsel for the appellant and perused the impugned award as also the papers filed alongwith the memo of appeal. This first appeal from order is preferred by the claimant for enhancement against the judgment and award dated 7.12.2012 passed by Motor Accident Claim Tribunal/Additional District Judge (Ex Cadre), court No. 22, Allahabad in M.A.C.P. No. 776 of 2011. Shyam Babu Mishra v. Neeraj Kela and another.

2. The claimant-appellant met with an accident on 15.7.2009, in which it is claimed that his backbone had fractured and as a result of the injuries sustained in the accident, his lower half of the body became paralysed. He filed aforesaid claim petition under Sections 140 and 166 of the Motor Vehicles Act, arraying owner of the offending vehicle as opposite party No. 1 and the insurance company as opposite party No. 2. The Tribunal after hearing the parties, by the impugned award has allowed claim of the appellant for a sum of Rs. 5,15,970 which has been directed to be paid to him by the insurance company.

3. Contention of learned counsel for the appellant is that compensation awarded by the Tribunal is too meagre in view of the facts and circumstances of the case particularly when lower half of the body of appellant downward has become

paralysed and he is now unable to earn his livelihood. According to him, the injured appellant was a taxi driver in Bombay and was earning Rs. 10,000 per month.

4. Upon hearing learned counsel for the appellant and on perusal of the record, we find that appellant has neither filed copy of the claim petition nor any disability certificate alongwith the present appeal. He has not even brought on record of this appeal his driving licence and has also not been able to prove his income before the Tribunal. It appears that the appellant had claimed 80% disability and the Tribunal taking it to be as such, on the basis of his notional income as Rs. 3,000 per month, has computed the compensation. We further find from the award that the medical bills which had been proved by him before the Tribunal, have also been considered by the Tribunal.

5. So far as the submission that appellant was a taxi driver earning Rs. 10,000 per month is concerned, we may observe here that driving licence alone which he had filed before the Tribunal, does not prove his employment as taxi driver rather it only establishes that he was authorised to drive a motor vehicle. It is not the case of the appellant that he was employed with travel agency as driver or with any private person having taxi transport business or he himself owns a taxi. P.W. 1 Daya Shanker Mishra and P.W. 2 the claimant- appellant himself, have stated before the Tribunal that before the accident in question, the claimant was a taxi driver in Bombay but no evidence was led before the Tribunal regarding income of the appellant from that profession. Hence, in the absence of any evidence in that regard, it cannot be concluded solely on the basis of the driving licence that he was employed as taxi driver earning Rs. 10,000 per month and the Tribunal has rightly taken his notional income as Rs. 3,000 per month in the facts and circumstances of the case.

6. In the circumstances aforesaid, we are unable to accept the contention of learned counsel for the appellant. For all the reasons stated above, the present appeal sans merit and is accordingly dismissed