

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 189 OF 2015

DHANAJI MAROTRAO JADHAV

VERSUS

UNITED INDIA INSURANCE COMPANY LTD. AND ANOTHER

...

Advocate for Appellant : Mr. U. M. Humbe h/for Mr. Yadav
Santosh R.

Advocate for Respondent No.1 : Mr. S. R. Bodade

Advocate for Respondent No.2 : A. S. Barlota

CORAM : V. K. JADHAV, J.

DATE : 8th March, 2016

PER COURT :

1. In view of order dated 1st December, 2015, this appeal is taken up for final disposal at the stage of admission itself.

2. The appellant/ original claimant preferred this appeal for enhancement in the compensation awarded by the learned Member of the Motor Accident Claim Tribunal, Jalna by order dated 16.04.2013 in MACP No. 40/2011.

3. Brief facts giving rise to the present appeal are as follows:

i. The accident had taken place on 02.07.2010. On that day, the appellant/claimant was travelling as pillion

rider on Motorcycle bearing registration No.MH-22 A-6569 which was being driven by one Rangnath. They were proceeding towards village Lonar Bhaygaon. At about 1:00 p.m., when they had reached near Ambadgaon Pati, one Ape Rickshaw bearing registration No.MH-21 Y-210 came from opposite direction in high speed and gave dash to the said motorcycle. In consequence of which, claimant/pillion rider sustained severe injuries on various parts of his body.

ii.The appellant/claimant preferred MACP No. 40/2011 before the Motor Accident Claim Tribunal, Jalna claiming compensation of Rs.4,00,000/- from the respondents under various heads. Learned Member of the Motor Accident Claim Tribunal, Jalna has considered 30% disablement and considering loss of future income, medical expenses, attendance, conveyance and transport, pains and sufferings, actual loss of income, awarded total compensation of Rs.1,71,000/- to the appellant/claimant by considering contributory negligence to the extent of 30% of the Motorcycle rider. The appellant original claimant has filed the present appeal to the extent of quantum of compensation only.

4. Learned counsel for the appellant/claimant submits that the learned Member of the Motor Accident Claim Tribunal, Jalna has not considered the agricultural income of the appellant/claimant. Even though the appellant own and possess agricultural land admeasuring 1 H 56 R and his yearly income from the agricultural land is certified by the concerned Talathi, the same is not considered by the Tribunal. The learned counsel submits that learned Member of the Motor Accident Claim Tribunal, Jalna has considered the case as no proof of income and accordingly considered notional income of the appellant as agricultural labour while assessing the compensation.

5. The learned counsel appearing for the respondent No.1 Insurer submits that since there was no evidence of income from agricultural land, the Learned Member of the Motor Accident Claim Tribunal, Jalna constrained to consider the notional income and accordingly assessed the compensation. The learned counsel submits that the Tribunal has rightly considered the notional income as wages of agricultural labour prevailing at that time and after considering the disablement sustained by the appellant and contributory negligence of rider of the motorcycle, awarded just and reasonable compensation.

The learned counsel submits that there is no reason to interfere with the judgment and award passed by the Learned Member of the Motor Accident Claim Tribunal, Jalna. The appeal sans merit and the same is liable to be dismissed.

6. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

Points	Findings
1) Whether the quantum of compensation : as determined by the Tribunal calls for interference ?	In the affirmative.
2) What order ?	: As per final order.

7. It appears from the impugned judgment and award that the learned Member, Motor Accident Claim Tribunal, Jalna has not considered the agricultural income of the appellant/claimant. The learned Member has observed in para 22 of the impugned judgment and award that the appellant/claimant own and possess 1 H 56 R agricultural land, however, the learned Member, in the same para, has further observed that the claimant does not have any corroborative evidence to strengthen his evidence on

the point of his income from agriculture. Since it is not disputed that the appellant is having agricultural land, there was no reason for the Tribunal to ignore the said aspect in toto. 7/12 extract is also produced on record. It appears that the appellant/claimant is taking crops like cotton, Bajra etc.

8. So far as nature of disablement sustained by the appellant/claimant is concerned, I do not find that there is total loss of agricultural income. However, considering the disablement sustained by the appellant claimant, it can be said that he is not in position to cultivate the land or supervise over the cultivation of land in the same manner as it was prior to the accident. Considering this aspect, the income of the appellant claimant can be considered as Rs.4,120/- per month as against Rs.3120/- per month considered by the Learned Member, Motor Accident Claim Tribunal, Jalna. Thus, by addition of Rs.1000/-, if monthly income of the appellant claimant is considered at Rs.4,120/-, the same corresponds to Rs.49,440/- per annum and 30% of the same (percentage of permanent disablement) come to Rs.14,832/-.

9. So far as multiplier 17 is concerned, the same is not disputed. If the amount of Rs.14,832/- is multiplied

by 17, the amount comes to Rs.2,52,144/- which is loss towards future income. Thus, breakup of compensation awardable to the appellant/claimant can be categorized in the manner as done by the learned Member of the Motor Accident Claim Tribunal, Jalna in para 24 of the judgment. However, only in column No.(i) of the breakup given in para 24, loss of future income is required to be considered Rs.2,52,144/- and thus total amount comes to Rs.3,05,404/- as against Rs.2,44,260 assessed by the Tribunal. 70% of amount of Rs.3,05,404/- comes to Rs.2,13,783/-. Thus, the appellant/claimant is entitled to total compensation of Rs.2,13,783/-.

10. In view of the aforesaid discussion and observations, I answer Point No.1 in the affirmative, and proceed to pass the following order:

O R D E R

- i. The first appeal is hereby partly allowed.
- ii. Judgment and Award dated 16.04.2013 passed by the learned Member, Motor Accident Claim Tribunal, Jalna in MACP No.40/2011 is modified to the extent of award of additional compensation as follows:.

Respondents 1 and 2 are directed to jointly and severally pay compensation of Rs.2,13,783/- (Rupees two lakhs thirteen thousand seven hundred eighty three only) to the appellant/claimant, inclusive of NFL amount, with interest @ 7.5% per annum from the date of filing of the claim petition i.e. from 25.02.2011 till realization of the amount.

iii. Rest of the award of the learned Member of the Motor Accident Claim Tribunal, Jalna is maintained.

iv. First appeal is accordingly disposed of.

v. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC