IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 17 OF 2002.
WITH
CIVIL APPLICATION NO.215 OF 2002.

The Oriental Insurance Co. Ltd.
through its Aurthorised signatory,
Asst. Manager, Mr.
Age yrs, Occ. Service,
R/o. Aurangabad. **....Appellant.**
(Ori. Resp. 2)

Versus

1. Sampat Pandurang Anandkar
died L.Rs.

A. Smt. Saraswati wd/o Sampat Anandkar,
Age 33 years, occ. Household,
R/o. Shrigonda, Ta. Shrigonda,
Dist. Ahmednagar.

B. Sandeep s/o Sampat Anandkar,
Age 12 years, Minor through his
Guardian/Mother.
Saraswati wd/Sampat anandkar

C. Swati d/o Sampt Anandkar
Age 10 years, Minor through her
Mother/Guardian,
Smt. Saraswati wd/o Sampat Anandkar

D. Smt. Kisabai w/o Pandurang Anandkar
Age 60 years, occ. Household,
R/o Shrigonda, Ta. Shrigonda,
Dist. Ahmednagar.

2. Ramesh Vitthal Khetmalis,
Age 40 years, Occu. Business,
Khetmalis Mala, Devigaon Road,
Tq. Shrigonda, Dist. Ahmednagar. **....Respondents.**
(Ori. Claimant &
Resp. No. 1)

Mr. Dhananjay Deshpande, Advocate for appellant.

Mr. V.P. Latange, Advocate for respondent No.2

CORAM : T.V. NALAWADE, J.
DATED : 18th January, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 159/2000, which was pending before the Claims Tribunal, Ahmednagar. The claim of respondent - Sampat filed for compensation in respect of injury sustained by him in motor vehicle accident is allowed and compensation of Rs. 9,16,845/- is awarded to him. The decision is challenged by the Insurance Company only. Before the Tribunal, the owner had not turned up to contest the matter. Heard both the sides.

2) The claim was filed by Sampat through his wife as he is virtually paralyzed due to injuries sustained in the accident and he cannot even speak. The accident took place on 13.12.1999 at about 7.40 p.m. within local jurisdiction of Parner Police Station. The claimant was travelling in a jeep bearing No. MH-16/C-7327. It is contended that due to rash and negligent driving by its jeep driver, it gave dash to a truck which was coming from opposite direction. Police filed case against jeep driver for this accident.

3) It is the case of claimant that he sustained injuries to

his head and other portions of the body and he received treatment in Civil Hospital, Ahmednagar and also in Rubi Clinic, Pune and at other places. On the date of petition i.e. on 2.2.2000, he was still under treatment. It is contended that he was required to spend Rs. 1.25 lakh on the treatment as on the date of petition and he will be required to spend more amount in future. It is contended that at the relevant time he was 34 years old and he was making income of Rs. 5,000/- per month from agriculture and milk business. It is contended that his wife, his issues and parents were depending for their livelihood on his income and due to injuries, he cannot do any work. Under various heads, he had claimed the compensation of Rs. 6,00,000/- by restricting his claim.

4) The Insurance Company filed written statement and it denied everything. It denied that the claimant is suffering from permanent disability and he cannot do any work. It denied that in the past, claimant was earning Rs. 5,000/- from agriculture and from milk business. It denied that the accident had taken place due to fault of jeep driver. It contended that the accident took place due to fault of truck driver. Alternatively, it contended that in the jeep, fare paying passengers were being carried and there has been breach of conditions of policy. It contended that the claimant himself was fare paying passenger and so, the

Insurance Company is not liable to pay anything.

5) Before the Tribunal, only the wife of claimant gave evidence. The wife of claimant was not present in the jeep at the relevant time and her evidence can be considered only on the point of quantum of compensation. It is not disputed that police blamed driver of the jeep for the accident and case was filed against him. The report in respect of accident was given by the truck driver and the spot panchanama shows that it's contents are consistent with the case of claimant. There is nothing in rebuttal and so, the Tribunal has not committed any error in holding that the accident took place due to fault of jeep driver.

6) In the police papers, there is mention that the claimant sustained injuries in the accident. M.L.C. prepared by the Government Hospital shows that most of the injuries were on head portion and he was referred for further treatment to other hospital, immediately, on the next day. There is record of Rubi Clinic, Pune showing that the claimant was indoor patient from 14.12.1999 to 9.1.2000 and he was treated for injuries to head and face. The medical record is not disputed and it shows that there was bleeding inside of head and there were fractures of bones of head. It is not disputed that the claimant is totally paralyzed due to injuries and he cannot do anything.

7) The wife of the claimant has given evidence on his income. She has deposed that the claimant was making income by cultivating family land and by selling milk to one co-operative milk dairy. She has deposed that monthly income was around Rs.8,000/-. She has given evidence that till the date of deposition i.e. 10.7.2001, she was required to spend more than Rs.3,00,000/- lakh on the treatment. Witness Shri. Raut from a co-operative milk diary is examined. He had brought the record of dairy to the Court. His evidence shows that the dairy was making payment of around Rs. 12,000/- per month to the claimant as the claimant used to supply milk of 50 ltrs. per day to the diary. Even if it is presumed that the claimant was making profit of 50% from this amount, it can be said that he was definitely earning more than Rs. 5,000/- per month. No other record like 7/12 is produced, but it can be presumed that he was cultivating the land in view of the aforesaid record. Though there is the evidence of aforesaid nature, the Tribunal has presumed that the monthly income was around Rs. 3,000/-. The claimant was aged about 33 years and so, 16 is used as multiplier. As there is total loss of income, the Tribunal has held that the loss of income is of Rs. 5,76,000/-. Considering the aforesaid evidence, it can be said that this amount is on lower side. The bills of Rs. 2,40,000/- are not disputed. Similarly, it cannot be

disputed that some amount must have been spent on conveyance, attendance, diet etc. Amount of Rs. 20,000/- is given for future medical expenses and the total amount of Rs. 9,16,845/- is given. In view of nature of injuries sustained and the evidence given, it can be said that the compensation awarded is on lower side.

8) Though the Insurance Company has taken the defence of aforesaid nature, nothing is given in rebuttal. In absence of such evidence, it cannot be presumed that the accident took place due to fault of jeep driver or that there was breach of conditions of policy. There is nothing on the record on the basis of which the judgment and award can be interfered with.

9) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

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