

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 892 OF 2009

Laxmibai w/o Murlidhar Tingre .. Appellant
Age 40 years, Occu: Household Orig. claimant.
R/o vikas Nagar, Latur
Tq. & Dist. Latur

VERSUS

1. Dipak Ram Kharade
Age 32 Years, Occu: Driver
R/o Gondhari Rtq. Ausa
Dist. Latur
2. Anant s/o Ramakant Yadav
Age 35 years, Occu: Business
R/o Nathnagar, Latur.
Dist. And Dist. Latur
4. United India Assurance Co. Ltd. ... Respondents
Through its Branch Manager,
Branch at Latur

Mr. R. K. Ashtekar, Advocate for appellant
Mr. P. R. Tandale, Advocate for respondents 1 and 2.
Mr. S. G. Chapalgaonkar, Advocate for respondent No.3

CORAM : V. K. JADHAV, J.

DATE : 16th March, 2016

PER COURT :

1. Being aggrieved by the judgment and award dated 19.08.2008 passed by the learned Member of the Motor Accident Claims Tribunal, Latur in MACP No.239/2007, the appellant/original claimant has preferred this appeal.

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

i. On 14.05.2006, the appellant alongwith her granddaughter was proceeding towards village Panchincholi by auto rickshaw bearing registration No.MH-24-D-8428. On way, said auto rickshaw met with an accident and the appellant original claimant had sustained fracture injury on her leg. She was treated in the Hospital and even crime was also registered with the concerned police station in respect of the said accident. The appellant/claimant filed claim petition bearing MACP No. 239/2007 before the Motor Accident Claims Tribunal, Latur under section 166 of the Motor Vehicles Act claiming compensation of Rs.2,50,000/- under various heads.

ii. Learned Member, Motor Accident Claims Tribunal, by its impugned judgment and award, partly allowed the said claim petition and thereby directed respondent Nos. 1 to 3 to pay compensation of Rs.64,503/- jointly and severally along with interest @ 6% per annum from the date of petition till realization of the entire amount. The appellant claimant has

preferred this appeal to the extent of quantum of compensation.

3. The learned counsel for the appellant/original claimant submits that the appellant claimant has approached the Tribunal with specific pleading that prior to the accident she was doing tailoring business and also taking classes for teaching tailoring to girls and thereby earning Rs.3000/- per month. However, the same is not considered by the Tribunal and that her notional income is considered at Rs.15000/- per annum erroneously. The learned counsel further submits that the Tribunal has awarded only @ 6% per annum interest and the same is required to be awarded @ 9% per annum.

4. Learned counsel for respondent No.3/Insurer submits that the appellant claimant has failed to prove her income before the Tribunal and therefore, the Tribunal has rightly considered the notional income at Rs.15000/- per annum. The learned counsel submits that the Tribunal, however, has committed error while applying multiplier of 15 instead of 14.

5. I have also heard learned counsel for respondent Nos. 1 and 2.

6. Since the quantum of compensation is under challenge only, the following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

Points	Findings
1) Whether the learned Member of the Tribunal has rightly assessed the compensation for the injuries sustained by the claimant which resulted into permanent disablement?	In the negative.
2) Whether the impugned judgment and award calls for interference ?	In the affirmative.
3) What order ?	As per final order.

7. According to the appellant/claimant, she was doing sewing work in her house and there is no question to obtain any licence for the same. Learned Member of the Tribunal has observed that the claimant is not having any certificate of sewing work and she failed to produce any document about her sewing work. It appears that the appellant/claimant has failed to adduce evidence about her income from the tailoring business. In the backdrop of this, the learned Tribunal should have considered her notional income at Rs.3000/- per month from the said

business. However, the tribunal has committed mistake in assessing compensation by considering income of the appellant/claimant as non earning member at Rs.15000/-per annum. It also appears that the Tribunal has committed mistake in applying multiplier of 15 instead of multiplier of 14. Even if the claimant comes within the age group of 40 to 45 years, correct multiplier is 14 as per second schedule of the Act.

8. In view of this, notional income is required to be considered at Rs.3000/ per month which corresponds to Rs.36,000/- per year. If multiplier of 14 is applied to this, total amount of compensation comes to Rs.5,04,000/-. Learned counsel for the appellant/Insurer has also not disputed that the claimant sustained permanent disability to the extent of 18% and the claimant is thus entitled to compensation to the extent of 18% of the total compensation. Thus breakup of compensation comes in the following manner:

Loss of income	:	90,720/-
Medical Bills	:	19,003/-
Pains and suffering	:	5,000/-
Total Rs.		1,14,723/-

9. Thus the appellant/claimant is entitled for total

compensation of Rs.1,14,723/-. Further, the Tribunal ought to have awarded interest @ 9% per annum instead of 6% per annum. Accordingly I answered the points taken for determination and proceed to pass following order:

O R D E R

- i. The first appeal is hereby partly allowed.
- ii. Judgment and Award dated 19.08.2008 passed by the learned Member, Motor Accident Claims Tribunal, Latur in MACP No.239/2007 is modified to the following effect:

The claimant do recover compensation at Rs.1,14,723/-(Rupees one lakh fourteen thousand seven hundred and twenty three only) from Respondent Nos. 1 and 3 jointly and severally with interest @ 9% per annum from the date of filing of the claim petition i.e. 20.08.2007 till realization of the entire amount.

- iii. Rest of the award of the learned Member of the Motor Accident Claims Tribunal, Latur is confirmed.
- iv. An amount of Rs.64,503/- as awarded by the Tribunal if paid to the claimant alongwith interest, the

same shall be deducted while making calculation of compensation as per this modified award.

v. First appeal is accordingly disposed of.

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

(V. K. JADHAV, J.)

JPC