

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

FIRST APPEAL NO. 203 OF 2002

Shriram Mudgalrao Naike,
age 25 yrs, Occ. Service,
R/o Khorli Galli, Latur.
Dist Latur.

..Appellant...
(orig claimant)

VERSUS

1. Mahantappa Kore,
age 35 yrs, Occ. Driver. ...R No. 1 abated..
2. Mohd. Fakeersaheb s/o Mohd
Moinddin, age 45 yrs, ...R No.2 dismissed.
3. United India Insurance Co. Ltd.,
Chandra Nagar, Latur. ...Respondents...

..
Advocate for Appellant : Mr V G Kodale h/f V D Gunale
Advocate for Respondent 3 : Mr S G Chapalgaonkar
R No.1 abated, R. No.2 Dismissed.

...
CORAM : V.K. JADHAV, J.

Dated: April 20, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and Award passed by the Member, motor Accident Claims Tribunal, dated 29.10.2001, in MACP No.138/1998, the original applicant-claimant has preferred this appeal to the extent of quantum.

2. The learned counsel for the appellant-original claimants submits that, the appellant-claimant was working as a Peon on monthly salary of Rs.1,200/- in Jiwan Vikas Craft Teacher Institute, Latur. The claimant has also examined witness Manohar Badame to prove the contents of salary/experience certificate. Thus said salary certificate is marked at exh.36. Furthermore, the claimant was also working with one Shivismurti Milk Agency, Latur. He was working in the said dairy from 5.00 am to 8.00 am and thereafter attending his job in the said Jiwan Vikas Craft Teacher Institute. After the accident, he was removed from the service by both the employers. Learned counsel submits that the Tribunal has not considered the income of the appellant-claimant for grant of compensation under the head of loss of future income. Learned counsel submits that the claimant has produced on record the disablement certificate at exh.14 and the treating orthopedician doctor has recorded percentage of disablement as 25%. The Tribunal has not considered said disablement certificate and awarded the lump-sum compensation by making departure from

multiplier method. Learned counsel submits that, the Tribunal has awarded very meager amount under the non-pecuniary heads and also towards medical expenses incurred by the claimant.

3. Learned counsel for respondent-insurer submits that, the claimant has failed to prove his income from the said milk dairy. Though the claimant was working as a peon in the said Jiwan Vikas Craft Teacher Institute, Latur, witness Manohar Badame has not deposed before the Tribunal that because of the disablement sustained by the claimant, he was removed from the job. Learned counsel submits that even the claimant has not deposed about the consequences of his so called permanent disablement and as such, the Tribunal has awarded the compensation for loss of past income. The Tribunal has awarded the compensation of Rs.20,000/- under pains and sufferings. The Tribunal has awarded just and reasonable compensation under non-pecuniary heads and even though the claimant has taken treatment in the Government Hospital, awarded the compensation towards medical expenses. In view of

the same, no interference is required.

4. Learned counsel submits that the respondent-insurer has raised a specific defence that the appellant claimant was travelling as a gratuitous passenger in the goods vehicle. However, the learned Member of the Tribunal by relying upon the case of **New India Assurance Company Ltd., Vs. Satpal Singh and Others** reported in **AIR 2000 Supreme Court, 235**, held the insurance company liable to pay the compensation jointly and severally alongwith the owner and in view of the ratio laid down in the said case, the respondent-insurer has also paid the entire amount as per the award passed by the Tribunal to the claimant. Learned counsel submits that the ratio laid down in the said case **New India Assurance Company Ltd., Vs. Satpal Singh and Others** is subsequently held to be not good in law and in view of the same, if any additional compensation is awarded in this appeal, the respondent owner is liable to pay the same.

5. On perusal of the record and proceeding and

impugned judgment and award, it appears that the claimant has not adduced evidence to the satisfaction of the Tribunal about his earnings from milk dairy. So far as his salaried income of the claimant is concerned, the said witness Manohar Badame has only deposed that the claimant was working as a Peon in his institute for only one month. He has not stated before the Tribunal that, his institute has removed the claimant on account of the permanent disablement sustained by him. The claimant has also not deposed as to consequences of his disablement. It is not the case of the claimant that because of the disablement sustained by him, he is not able to do his work as peon or he is not able to do any other work.

6. On perusal of said disablement certificate exh.14 which has been in form comp.'B', it appears that treating Dr.Golhar has certified permanent physical disability to the extent of 25% due to loss of bone hammer toe and soft tissue as well as stiffness to toes. Though, there is no loss of future income as such, the Tribunal ought to have awarded certain amount for the

injuries sustained by the claimant which resulted into above permanent disablement. In view of the same, the claimant is entitled for the compensation of Rs.25,000/- under the head of permanent disablement. The Tribunal has awarded just and reasonable compensation under other heads.

7. So far as the submissions made by the learned counsel for respondent-insurer are concerned, the respondent-insurer has not preferred any appeal against the judgment and award passed by the Tribunal fastening the liability on the respondent-insurer to pay the compensation jointly and severally alongwith respondent-owner. Even though, this appeal was admitted on 8.4.2002 and ratio laid down in the said **New India Assurance Company Ltd., Vs. Satpal Singh and Others** held to be not good in law by the Supreme Court in **New India Assurance Company Ltd., Vs. Asha Rani and others reported in (2003) 2 Supreme Court Cases 223**, the respondent-insurer has not filed any cross objection/appeal alongwith the condonation of delay, if any. On the other hand, respondent-insurer

has accepted the liability and paid the entire amount under award to the claimant.

8. In view of the above, with the above modifications, the appeal is disposed of. Hence, following order.

O R D E R

- i. First Appeal is hereby partly allowed.
- ii. The judgment and Award dated 29.10.2001 passed by the Member, Motor Accident Claims Tribunal, Latur in MACP No. 138/1998 is hereby modified in the following manner :-
 - a] The respondents do jointly and severally pay the claimant compensation of Rs.52,400/- (Rs. Fifty Two thousand four hundred only) (inclusive of 'No Fault Liability' amount of Rs.25,000/- which is already paid) with simple interest @ 9% p.a. thereon from the date of petition till the realization of the entire amount.
- iii. Rest of the judgment and award stands confirmed.
- iv. Award be drawn up as per the above modifications accordingly.

- v. Needless to say that, if, any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the above modified award.
- vi. Appeal is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-