

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

913 FIRST APPEAL NO. 305 OF 2017

VASUDEO BANKATRAO JADHAV
VERSUS
JITENDRA GANPATRAO KAMBLE AND ANOTHER

...

Mr. Santosh B. Gastgar, Advocate for Appellant.
Mr. Santosh N. Patne, Advocate for Respondent No.1.
Mr. Swapnil S. Rathi, Advocate for Respondent No.2.

...

WITH

CROSS-OBJECTION (STAMP) NO.24487 OF 2017
IN FA/305/2017

UNITED INDIA INSURANCE COMPANY LTD.,
THROUGH ITS ADMINISTRATIVE OFFICER (T.P.HUB)
MAHENDRA S/O PRATAPSIKH VIRAT, AURANGABAD

VERSUS

VASUDEO BANKATRAO JADHAV AND ANOTHER

...

Mr. Swapnil S. Rathi, Advocate for Cross-Objector.
Mr. Santosh B. Gastgar, Advocate for Respondent No.1.
Mr. Santosh N. Patne, Advocate for Respondent No.2.

...

CORAM : **V. K. JADHAV, J.**
DATE : 01st August, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by
the learned Member of the Motor Accident Claims Tribunal, Latur

dated 27th October, 2016 in MACP No.294 of 2013, original Claimant has preferred First Appeal No.305 of 2017 to the extent of quantum of compensation as awarded by the Tribunal and the original Respondent / Insurer has preferred the Cross-Objection (Stamp) No.24487 of 2017.

3 Brief facts giving rise to the present appeal and the cross-objection are as follows:

- a) On 20th June, 2007 the Claimant was proceeding from village Peth to Latur on motorcycle alongwith his friend. The Claimant was riding the motorcycle from left side of the road in slow speed. On way, near one Khasgi Dhaba, at about 10:30 pm, one motorcycle bearing registration No.MH-24-Q-2674 came in high and excessive speed from the opposite direction and gave forceful dash on the front side of the motorcycle of the Claimant. In consequence of which, the Claimant sustained grievous and fracture injuries on his left hand / shoulder. He was immediately shifted to one private hospital at Latur for medical treatment. The injuries sustained by the Claimant resulted into permanent disablement and

the Claimant has also incurred huge medical expenses. Thus, the Claimant has approached to the Tribunal by filing MACP No.294 of 2013 for grant of compensation under the various heads.

- b) Respondent No.1 / owner-cum-rider of the offending motorcycle has strongly resisted the claim petition by filing the written statement. It has been denied that Respondent No.1 has driven his motorcycle in rash and negligent manner and caused the accident. It has been contended that the said motorcycle is insured with Respondent No.2 and as such, Respondent / Insurer is liable to pay the compensation.
- c) Respondent No.2 / Insurance Company has also strongly resisted the claim petition by filing the written statement on various grounds and further denied the claim.
- d) The Claimant adduced the oral and documentary evidence in support of his contentions. The Respondents have not adduced any evidence. The

learned Member of the Tribunal vide its impugned judgment and award dated 27th October, 2016 partly allowed the claim petition and directed the Respondents to pay jointly and severally the compensation amount of Rs.2,38,615/- with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the entire amount. Being aggrieved by the same, the Claimant has preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal and the Respondent / Insurer has preferred the cross-objection so far as the finding of negligence recorded by the Tribunal and also against the quantum of compensation.

4 The learned counsel for Appellant / Claimant submits that the Claimant possessed B.Ed. qualification and he was taking the coaching classes of English in the hostel. He was earning Rs.10,000/- per month out of said tuition and further he was also earning Rs.6,000/- per month from his teaching job on hourly basis as a teacher in Saraswati Sangit Kanistha Mahavidhyalaya, Latur. The

Claimant has examined CW-2 Sachin Suryawanshi on the point of income. However, the Tribunal has not given weightage to the said evidence and considered the notional income of the Claimant at Rs.3,000/- per month. The learned counsel submits that the Claimant was in the teaching job prior to the accident and the Tribunal has erroneously considered the income of the Claimant that of the income of a labour. The learned counsel submits that the Tribunal has awarded very meager amount under pains and sufferings. Even the Tribunal has not awarded any compensation for special diet and attendant charges. The Tribunal has not awarded the compensation separately for the permanent disablement sustained by the Claimant and also the compensation for loss of amenities in future life. The Appellant / Claimant has sustained the injuries on his left hand and shoulder. There is stiffness in his left shoulder and left wrist and as opined by the expert evidence, the said disability is permanent in nature. The Tribunal ought to have awarded the compensation under the above said heads. The learned counsel submits that the Tribunal has awarded the compensation with interest at the rate of 6% per annum instead of 9% per annum.

there is a head on collision between two vehicles. As per the contents of spot Panchanama Exhibit 21 and the map drawn on it, the place of the incident is shown at the middle portion of the road. The learned counsel submits that only on the basis of the statement of the Claimant, which came to be recorded belatedly, the concerned P.S. has registered the crime against the rider of the offending motorcycle. On perusal of the contents of spot Panchanama Exhibit 21 and the map drawn on it, it is clear that the Appellant / Claimant is equally responsible for the accident and as such, the Tribunal ought to have considered the negligence on the part of the Appellant / Claimant to the extent of 50%. The learned counsel submits that as admitted by witness Dr. Kiran Gojamgunde, the Appellant / Claimant has sustained the permanent disablement limb wise to the extent of 10%. The said witness Dr. Gojamgunde has also admitted in his cross-examination that there is no impact of the said permanent disablement on the work of teaching job. The learned counsel submits that since there is no loss in future income, the question of considering the correct income of the Appellant / Claimant, loses its significance. Even if the income of Appellant / Claimant is considered otherwise, since there is no loss of income, there cannot be an application of multiplier method to assess the loss of future income. The Tribunal has unnecessarily carried out

the said exercise and awarded the compensation under the head of loss of future income by ignoring the admission given by witness Dr.Gojamgunde. The learned counsel submits that considering the fact and circumstances of the present case, the Tribunal has awarded just and reasonable compensation under the other heads.

6 I have also heard the learned counsel for Respondent No.1 / owner of the offending vehicle.

7 On perusal of the pleadings, evidence and the impugned judgment and award passed by the Tribunal, it appears that though the accident had taken place on 20th June, 2007, the complaint was lodged on 28th July, 2007 and accordingly, the crime came to be registered against the rider of the offending motorcycle in the concerned P.S. Though there is a belated complaint, Respondent No.1 / owner-cum-rider of the offending motorcycle has not denied happening of the accident. However, so far as the spot Panchanama Exhibit 21 is concerned, the same was drawn on next day i.e. 29th July, 2017 of the registration of crime. Even in the contents of spot Panchanama, it has been specifically mentioned that due to such a long gap, there is nothing on spot to indicate the exact spot of accident etc. Even nothing was seized from the spot of accident since it was a heavy

traffic road. It is thus, difficult to accept that as per the map drawn on the spot Panchanama, the spot of accident is situated in the middle portion of the road. The Appellant / Claimant has deposed that he was proceeding by Ausa Latur road, which is south-north in direction and Latur is situated towards the northern side. The Appellant / Claimant was proceeding from his left side i.e. from the western side of the road and the said Khasgi Dhaba is also situated towards western side of the road. The Appellant / Claimant has deposed that at the spot of accident, the rider of the motorcycle coming from opposite direction, suddenly turned his motorcycle towards the said Dhaba and given dash to the front portion of the motorcycle of the Appellant / Claimant. Though Respondent No.1 / owner-cum-rider of the said offending motorcycle has denied the rash and negligent driving on his part in causing the accident, has not examined himself before the Court to rebut the oral evidence of the Appellant / Claimant. Further, the Respondent / Insurer has also not examined Respondent No.1 as its witness on the point of negligence. Hence, I do not find any fault in the findings recorded by the Tribunal by giving weightage to the oral evidence of the Appellant / Claimant, who happened to be an injured witness and recorded the finding in the affirmative to issue Nos.1 and 2 respectively.

8 So far as the quantum of the compensation is concerned, I agree with the submissions made on behalf of the Respondent / Insurer that in view of the admissions given by witness Dr.Gojamgunde and even otherwise, there cannot be any impact on the teaching of the Appellant / Claimant so far as the nature of his disablement is concerned. In this way, recording the finding on the correct income of the Appellant / Claimant loses its significance since there is no loss in the future income as such. However, the Appellant / Claimant may be entitled for *lump-sum* amount as a token amount towards loss of actual income. I do not approve the multiplier method as applied by the Tribunal. In the given set of facts, the departure from the multiplier method to assess the compensation would be justified in this case.

9 The Appellant / Claimant has sustained the injuries on his left shoulder and chest. As per the expert opinion of witness Dr.Gojamgunde, due to the close fracture left humerus with Grade II compound fracture left ulna with chest injury with right clavicle fracture with stiffness in left shoulder and left wrist in form of inability to abduct the left shoulder and inability to extend left wrist with pain in left shoulder and left wrist, the disability limb wise is to the extent of 30% and the aforesaid disability is permanent in nature. Thus, the Claimant

is entitled for an amount of Rs.50,000/- separately for having sustained the permanent disablement in the aforesaid nature. The Claimant is also entitled for an amount of Rs.40,000/- for loss of amenities in future life. The Appellant / Claimant is entitled for an amount of Rs.10,000/- as a token amount for loss of actual income. It has come in the evidence of witness Dr.Gojamgunde that the Appellant / Claimant has sustained close fracture – left arm displaced with Grade-II compound fracture left ulna lower 1/4th with chest injury bilateral pneumothorax with right clavicle fracture and the nature of injuries were grievous. Further on 27th June, 2007, witness Dr.Gojamgunde operated the Appellant / Claimant in form of close interlock nailing for left humerus and square nailing for left ulna. Thus, the Appellant / Claimant undergone the operation and he suffered from pains and still he is facing the pains in left wrist and stiffness in the left shoulder. The Appellant / Claimant is entitled for an amount of Rs.40,000/- for pains and sufferings. The Appellant / Claimant is also entitled for an amount of Rs.10,000/- each for special diet and attendant charges. It appears from the record that the Tribunal has awarded just and reasonable compensation for the medical expenses incurred by the Appellant / Claimant.

10 Thus, the break up of compensation under the various heads, which can be broadly categorized is as under:

Sr. No	Particulars of the head	Amount in Rupees
1)	Towards permanent disablement	Rs.50,000/-
2)	Towards loss of amenities in future life	Rs.40,000/-
3)	Towards pains and sufferings (as against Rs.3,000/- awarded by Tribunal)	Rs.40,000/-
4)	Towards loss of actual income	Rs.10,000/-
5)	Towards special diet and attendant charges (Rs.10,000/- each)	Rs.20,000/-
6)	Towards medical expenses (as awarded by the Tribunal)	Rs.62,815/-
	Total =	Rs.2,22,815/-

11 The Appellant / Claimant is thus, entitled for the total compensation of Rs.2,22,815/- with interest at the rate of 9% per annum instead of 6% per annum as awarded by the Tribunal. Thus, the impugned judgment and award passed by the Tribunal requires modification. Hence, the following order:

ORDER

- I. **First Appeal No. 305 of 2017** (Vasudeo Bankatrao Jadhav Vs. Jitendra Ganpatrao Kamble and another) and **Cross-Objection (Stamp) No.24487**

of 2017 (United India Insurance Company Ltd. Vs Vasudeo Bankatrao Jadhav and another), are hereby partly allowed. No costs.

- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Latur dated 27th October, 2016 in MACP No.294 of 2013, is hereby modified in the following manner:

“Respondent Nos.1 and 2 shall pay, jointly and severally, compensation amount of Rs.2,22,815/- (Rupees Two Lacs Twenty-Two Thousand Eight-Hundred and Fifteen Only) with interest at the rate of 9% per annum from the date of filing of petition till realization of the entire amount.”

- III. Rest of the judgment and award to the extent of finding on the point of negligence stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. If any amount is paid as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification and the amount in excess, if any, deposited by the

Respondent / Insurer before the Tribunal, the same shall be refunded as per the modified award.

VI. The appeal and the cross-objection are accordingly disposed of.

[V. K. JADHAV, J.]

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