

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

FIRST APPEAL NO. 1658 OF 2015

VISHWANATH BAPURAO CHILWANT AND OTHERS
VERSUS
SHYAM VASANT KUMBHAKARN AND ANOTHER

...

Advocate for Appellants : Mr. S.M.Kshirsagar, h/f Mr. P. N. Kalani.
Advocate for Respondent No.1 : Mr. S. N. Patne, h/f Mr. V. P. Latange.
Advocate for Respondent No.2 : Mr. M. M. Ambhore.

...

WITH

FIRST APPEAL NO. 314 OF 2015

THE NEW INDIA ASSURANCE COMPANY LTD.
THROUGH ITS DIVISIONAL MANAGER
VERSUS
VISHWANATH BAPURAO CHILWANT AND OTHERS

...

Advocate for Appellant : Mr. Mukul Kulkarni.
Advocate for Respondent Nos.1 to 3: Mr. S.M.Kshirsagar, h/f Mr. P.N.Kalani.
Advocate for Respondent No.4 : Mr. S. N. Patne, h/f Mr. V. P. Latange.

...

CORAM : **V. K. JADHAV, J.**
DATE : 13th February, 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, Parbhani dated 7th December, 2013 in MACP No.478 of 2010, the original Claimants have preferred First Appeal No.1658 of 2015;

whereas Respondent / Insurer has preferred First Appeal No.314 of 2015. The original Claimants as well as the Respondent / Insurer preferred these two separate appeals to the extent of quantum alone.

3 In First Appeal No.1658 of 2015, the learned counsel for Appellants / original Claimants submits that the Appellant / Claimant No.1 has deposed before the Tribunal that deceased Parmeshwar was getting Rs.5,000/- per month from his agricultural labour work, ignoring the same, the learned Member of the Tribunal has considered his income as notional income of Rs.4,500/-. The learned counsel submits that the Tribunal has therefore, awarded less compensation by considering the notional income of deceased Parmeshwar at Rs.4,500/- per month. The learned counsel submits that the Tribunal has also awarded 6% interest per annum instead of 9% per annum.

4 The learned counsel for the Appellant / Insurer submits that the learned Member of the Tribunal has not considered the negligence on the part of deceased Parmeshwar. He had also contributed the negligence to some extent. The learned counsel

submits that the Claimants have failed to prove the income of deceased Parmeshwar. Thus, the Tribunal has considered his notional income at Rs.4,500/- per month and awarded the compensation.

5 On perusal of the pleadings and the evidence led by the parties and the judgment and award passed by the Tribunal, it appears that the learned Member of the Tribunal has rightly considered the notional income of deceased Parmeshwar at Rs.4,500/- per month. The Claimants have failed to substantiate their contentions that deceased Parmeshwar was doing the labour work and also personally cultivating his agricultural land. So far as deduction of 1/3rd amount towards the personal expenses of deceased Parmeshwar is concerned, both the learned counsel have admitted that deceased Parmeshwar was married, however, his wife died prior to his accidental death. I do not find any fault in the judgment and award passed by the Tribunal so far as considering the loss of future income on account of accidental death of deceased Parmeshwar is concerned. So far as the point of contributory negligence as raised by the learned counsel for the Insurer is concerned, it is a matter of record that deceased

Parmeshwar was returning on foot after attending the nature's call and the dash was given by the offending vehicle from his back side. By any stretch of imagination, it cannot be inferred that deceased Parmeshwar had also contributed the negligence to some extent. So far as interest at the rate of 6% per annum, it would be just and appropriate if the interest is to be directed at the rate of 9% per annum. With this modification, both these appears are disposed of. Hence, the following order:

ORDER

- I. First Appeal No.1658 of 2015, is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Parbhani dated 7th December, 2013 in MACP No.478 of 2010, is hereby modified and in clause (2) of the operative part of the award, instead of "interest @6% per annum from the date of petition till the realization of entire amount", the same is modified as "interest at the rate of 9% per annum

from the date of petition till the realization of entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up to the extent as per the above modification.
- V. First Appeal No.314 of 2015, is hereby dismissed.
No costs.
- VI. Both the appeals are accordingly disposed of.

[V. K. JADHAV, J.]

ndm