

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

FIRST APPEAL NO. 451 OF 2002

Jijabai w/o Dattatraya Gunjal,
Age : 43 yrs, Household and Agril,
R/o Talkudgaon, Tq. Newasa,
Dist. Ahmednagar, R/o S.P. Darandale,
N-11, K-8/6, Navjivan Colony,
HUDCO AURANGABAD.

... **APPELLANT**

VERSUS

1. Anil s/o Jugulal Jaiswal,
Age- 33 yrs. Occ- Driver and owner
of Tempo No.194-2-A-7588
M/s N-7, A-A17, Tirupati Permit,
Room No.7, CIDCO, AURANGABAD.

(R 1 – dismissed as per
Court's order dt. 5/5/09.)

2. The Branch Manager,
United India Insurance Co. Ltd.,
Aurangabad.

... **RESPONDENTS**
(Original Respondents)

...
Mr. D. G. Nagode, Advocate for Appellant.
...

CORAM : **V. K. JADHAV, J.**
DATE : 24th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by
the learned Member of the Motor Accident Claims Tribunal,
Aurangabad dated 18th July, 2001 in MACP No.101 of 1998, the

original Claimant has preferred this appeal to the extent of quantum of compensation.

2 The learned counsel for Appellant / Claimant submits that the Appellant / Claimant is suffering from dislocation of right hip. The Claimant has also deposed about the pains in her hip joint and also deposed that she is unable to walk. The Claimant has examined Witness Dr. Bhagwat Murade to prove the contents of the permanent disablement certificate Exhibit 36. The learned counsel submits that Witness Dr. Murade has issued the certificate Exhibit 36 about the permanent disablement and stated therein that the Claimant has suffered from disablement to the extent of 30%, which is permanent in nature. Witness Dr. Murade has also deposed about the future medical expenses required to be incurred by the Claimant. However, the Tribunal has not awarded any separate compensation to the Claimant for having sustained the permanent disablement to the extent of 30% as certified by Witness Dr. Murade. The Tribunal has also awarded meager amount towards the medical expenses. The learned counsel submits that the Appellant / Claimant was looking after her agricultural land prior to the accident. However, after the accident, she is not in a position to cultivate her agricultural land

personally and as such, there is a loss in the income from the agricultural source.

3 During the pendency of appeal, the appeal came to be dismissed against Respondent No.1 by order dated 5th May, 2009 for want of steps. The Appellant / Claimant has not taken steps against Respondent No.1 / owner. None present for Respondent No.2 / Insurer.

4 On careful perusal of the evidence and the judgment and award passed by the Tribunal, it appears that though Witness Dr.Murade has issued the certificate Exhibit 36 specifying therein the percentage of permanent disablement, he has deposed that now the dislocation is reduced but there was destruction of joint surface. He has, therefore, referred the patient to Sancheti Hospital, Pune. Referring letter is also placed on record and the same is marked as Exhibit 35. Witness Dr. Murade has issued the permanent disablement certificate Exhibit 36 in the year 1999. However, in his oral evidence he failed to give any reference to the treatment taken by the Appellant / Claimant in Sancheti Hospital, Pune in pursuant to his referring letter and further the consequences of the said treatment. In the permanent disablement certificate Exhibit 36, Witness Dr. Murade

has simply mentioned that the disability is due to pain, stiffness of right hip and inability to walk. It, thus, appears that even though Witness Dr. Murade has stated in his examination-in-chief that dislocation is reduced, he has failed to substantiate as to why there was a pain and stiffness in the right hip and inability to walk. So far as destruction of joint surface is concerned, Witness Dr. Murade has not stated so in his certificate Exhibit 36. Even in the reference letter Exhibit 35, Witness Dr. Murade has not given any reference to destruction of joint surface, according to him, for which, he referred the patient to Sancheti Hospital, Pune.

5 The learned counsel for Appellant / Claimant has vehemently submitted that the Claimant was required to incur the expenses for future medical treatment and she had also incurred accordingly subsequent to the award passed by the Tribunal. However, on careful perusal of the record, I do not find any single receipt of payment of medical expenses issued by Sancheti Hospital, Pune. Even then the Tribunal has considered the same and awarded Rs.30,000/- for medical treatment. It is a part of record that the Appellant / Claimant has produced the medical bills worth Rs.3,674/-.

6 The Appellant / Claimant has also admitted in her cross-examination that her husband is looking after the agricultural land and her son is also major. The Tribunal has therefore, awarded *lump sum* amount of compensation under the other heads since there was no loss of income as such. The Tribunal has awarded Rs.11,000/- for travelling expenses as the Appellant / Claimant has produced the bills of travelling expenses incurred by her. Further the Tribunal has also awarded Rs.10,000/- for pains and sufferings and Rs.25,000/- for loss of amenities, enjoyment taking into consideration the permanent disablement and the consequences thereof. In my considered opinion, the Tribunal has awarded just and reasonable compensation. No interference is required. I do not find any merit in the appeal. Hence, the following order:

ORDER

- I) The appeal, is hereby dismissed. In the circumstances, there shall be no order as to the costs.
- II) The appeal is accordingly disposed of.

[V. K. JADHAV, J.]