

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

FIRST APPEAL NO. 303 OF 2015

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
AURANGABAD THROUGH ITS LEGAL MANAGER AT
ADALAT ROAD, AURANGABAD.

VERSUS

VAIJENATH GANPATRAO JADHAV AND ANOTHER

...

Advocate for Appellant : Mr Abhijit Chaudhary h/f V V
Mate

Advocate for Respondent 1 : Mr Kale Mahesh P
Respondent No.2 absent.

...

CORAM : V.K. JADHAV, J.

Dated: February 01, 2017

...

PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the Judgment and Award passed by the Ex-officio Member, Motor Accident Claims Tribunal, Gangakhed, dated 24.1.2014 in MACP No.34/2009, the original respondent no.2-insurer has preferred this appeal to the extent of quantum.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 19.5.2009 the claimant was proceeding to his village on a motor cycle alongwith his maternal uncle.

He was a pillion rider on the said motor cycle. On Palam-Peth Pimpalgaon Road, near one Vijay Ginning Factory one tractor bearing registration No.MH-24/D-2434 with trailer bearing registration MH-22/B-9956 came from opposite direction in high speed, in zig zag manner and dashed to the motor cycle. In consequence of which, the claimant had sustained multiple injuries on his person. He was immediately shifted to Lotus Hospital, Nanded for treatment and, thereafter, shifted to 'Yeshoda Hospital, Nanded. He remained indoor patient for near about 68 days. He was also operated for head injury on 20.5.2009. The claimants have incurred huge medical expenses for his treatment. On account of the head injury sustained by the claimant, he is unable to perform his day to day activities and he does not have a rational understanding. The claimant is, therefore, approached the Tribunal and filed aforesaid M.A.C.P. through his next friend father. At the time of accident, the claimant was 35 years of age. He was serving in one 'Godavari Valley Agricultural Development and Research Foundation', Nanded on monthly salary of Rs.7,550/-. The claimant has thus prayed for grant of compensation

under the various heads.

b]. Respondents no.1 owner of tractor and trailer has not denied the accident, however, contended that the vehicle tractor involved in the accident is insured with the appellant insurer and the appellant insurer is liable to satisfy the award if passed against him. It has also contended that the rider of the motor cycle was at fault and driver of the tractor was not at fault.

c]. The appellant insurer has also strongly resisted the claim petition by filing written statement. It has contended that, driver of the tractor was not having valid and effective driving licence at the time of accident and as such there has been breach of the conditions of the policy. Respondents have denied age, occupation and disablement sustained by the claimant.

d]. The claimant has adduced oral and documentary evidence in support of his claim. Respondents have not adduced any evidence. The learned Member of the Tribunal has recorded findings in the affirmative to point no.1 and held that the accident had taken place

on account of rash and negligent driving of the tractor alone and the claimant has sustained disablement in the said accident. The learned Member of the Tribunal has also held that the appellant-insurer has failed to prove breach of the policy conditions on the part of respondent no.1-owner. Being aggrieved by the same, the appellant insurer has preferred this appeal to the extent of quantum alone.

4. The learned counsel for the appellant submits that, the claimant was not having any permanent job and as contended by the claimant he was serving as a field officer with 'NGO' on a consolidated payment of Rs.7,550/- for limited period of one year. Learned counsel submits that, said NGO has also stopped its functioning for the reason that, contract entered by the said NGO with reliance company expired in the year 2010. Consequently, witness Shrinivas Dhasewar, who happened to be a representative of the employer has failed to place on record the relevant documents pertaining to the consolidated monthly stipend being paid to the claimant. Even then, the learned Member of

the Tribunal has considered the income of claimant at Rs.7,550/- as deposed by the said witness without any supporting documents and further added 10% towards future prospectus. Learned counsel submits that, most of the material witnesses have been examined through the commissioner. Consequently, said witnesses have not deposed strictly as per the record available with them. Learned counsel submits that, the Tribunal has awarded exorbitant amount of compensation.

5. Learned counsel for respondent-claimant submits that, the claimant has examined two doctors to substantiate his contentions before the Tribunal. Witness Dr. Jadhav, who happened to be a neurosurgeon has deposed that the claimant has sustained injury to his brain and therefore he does not have a rational understanding. The claimant is unable to perform any work. The claimant has also examined witness no.6 Prakash Dake, who had issued the disability certificate Exh.359. According to this witness, claimant has sustained 27% of disability due to loss of movement of elbow and 20% disability due to loss of

finger grips. Thus, he suffered 47% of disablement in total. There is nothing in the cross examination to disbelieve these two witnesses. The claimant has also examined the representative of his employer to prove the contents of salary certificate Exh.348. The learned Member of the Tribunal has rightly considered the age of the claimant at the time of accident and by applying relevant multiplier, the learned Member of the Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal and the appeal is thus liable to be dismissed.

6. On careful perusal of the oral and documentary evidence and impugned judgment and award passed by the Tribunal, I find that the Tribunal has awarded just and reasonable compensation. Evidence of witness Dr. Jadhav and witness Dr. Dake cannot be doubted only for the reason that their evidence was recorded through Court Commissioner. Witness Dr. Jadhav is a neurosurgeon and in his opinion, the claimant does not have rational understanding and is unable to perform any work. He has further clarified that the claimant

had sustained injury on his brain and therefore he is not able to perform any work. Witness Dr. Dake is Orthopedician and he has also given percentage of permanent disablement. In his opinion, the claimant suffers from 47% of disability on account of loss of movement of elbow and also on account of loss of finger grips. The learned Member of the Tribunal in paragraph no.15 of the Judgment has also observed that though commissioner was directed to record oral evidence of claimant, the commissioner has submitted a report that, the claimant is unable to give rational answers to the questions put to him. The Court commissioner has further specified in his report that though the claimant can walk but he is unable to perform any work. Learned Member of the Tribunal has therefore, rightly come to the conclusion that on account of loss of power of the rational understanding and in terms of the disability certificate at exh.359, the claimant has lost his earning capacity to the extent of 100%.

7. So far as income of claimant is concerned, the claimant has examined Shrinavas Ghusewar, who has

deposed about the consolidated monthly stipend being paid to the claimant for serving as field officer with Godavari Valley Agricultural Development and Research Foundation a NGO. Said witness Shrinivas fairly pointed out to the Tribunal that the claimant was serving as a field officer for a limited period of contractual one year and before expiry of the said period, the claimant met with the aforesaid accident. Even though, said NGO has stopped its functioning in the subsequent year, the same cannot be a ground to disbelieve his oral evidence coupled with the relevant documents placed on record. Even, said witness has shown his ready and willingness to produce salary vouchers, attendance register and other relevant documents before the Tribunal. At the time of accident, the petitioner was 36 years and 9 months old. Considering his age, the learned Member of the Tribunal has applied multiplier '15' by making addition to the extent of 10% in the income of the claimant on count of future prospectus. The claimant was working as a Field Officer with the said 'NGO' and on the basis of said experience, he would have certainly secured a job with

some other 'NGO' or company. The learned Member of the Tribunal has, therefore, rightly considered his future prospectus and made addition in his income though at the meager rate of 10%.

8. In view of the above discussion, I do not find any fault in the impugned judgment and award. No interference is required. Hence, following order.

O R D E R

- I. First Appeal is hereby dismissed with costs.
- II. Appeal is accordingly disposed of.
- III. Needless to say that, if the amount is deposited by the appellant insurer before this Court, the respondent-claimant is permitted to withdraw the same.

(V.K. JADHAV, J.)

...

aaa/-