

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

6 FIRST APPEAL NO. 3458 OF 2016

UNITED INDIA ASSURANCE CO. LTD.
THROUGH ITS DEPUTY MANAGER, AURANGABAD
VERSUS
SAPNA MILIND SALUNKHE AND OTHERS

...

Advocate for Appellant : Mr. Swapnil S. Rathi.

Advocate for Respondent Nos.1 to 4 : Mr. M. B. Sandanshiv.

...

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

DATE : 13th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and order passed by learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 16th October, 2015 in MACP No.206 of 2011, original Respondent No.2 / Insurer has preferred this appeal to the extent of negligence and quantum of compensation.

3 The learned Member of the Tribunal has recorded the finding in the affirmative to issue No.1 and held that on 19th March, 2011 at about 08:15 p.m., deceased Milind died in an accident caused by rash and negligent driving of Tata Chota Hatti bearing registration

No.MH-20/AT-6827. The Tribunal after considering the evidence adduced by the Claimants awarded the compensation of Rs.28,28,000/- to the Claimants by directing the present Appellant No.1 and Respondent / owner to pay the same jointly and severally alongwith interest. Hence, this appeal.

4 The learned counsel for Appellant / Insurer submits that deceased Milind had driven his motorcycle in excessive speed and in rash and negligent manner. Accident occurred due to rash and negligent driving of motorcycle by deceased Milind. The driver of the said Tata truck was not at fault. However, the Tribunal has erroneously recorded the finding and accordingly, held that Respondent / owner of the said Tata truck and Appellant / Insurer jointly and severally liable to pay the compensation. The learned counsel submits that the Tribunal has awarded exorbitant amount of compensation under the head of loss of future income. The learned Member of Tribunal has added 50% amount in the salaried income of deceased Milind towards future prospects without there being any evidence on record about the future prospects available to deceased Milind in his service career.

5 The learned counsel for Respondents / Claimants submits

that said Tata truck came from the opposite direction in high speed. The driver of the said Tata truck had driven it in rash and negligent manner and after overtaking one another vehicle, given dash to the motorcycle of deceased by going to wrong side of the road. After the accident, the concerned P.S. has registered the crime against the driver of the said Tata truck alone. Respondent No.1 / owner of the said Tata truck has failed to appear before the Tribunal though duly served and therefore, hearing of the claim petition ordered to proceed *ex-parte* against him. The Tribunal after scrutinizing the evidence in the form of spot Panchanama Exhibit – 30 and other police papers, rightly recorded the finding in the affirmative to issue No.1 and held that the driver of the said Tata truck alone is responsible for the accident and none else. The learned counsel submits that deceased Milind was serving as a peon in Primary Health Center at Kajgaon, Taluka Bhadgaon District Jalgaon and he was drawing salary of Rs.13,863/- per month. The Claimants have also examined witness Kishor, who is serving as junior clerk at the Primary Health Center, Kajgaon. He has given all the details about the salary being paid to deceased Milind under the various heads. The said salary certificate is marked as Exhibit – 41. The Tribunal after considering the age of deceased Milind at the time of his accidental death, rightly added 50%

of the amount towards future prospects. The learned counsel submits that the Tribunal has considered annual income of deceased and after deducting 1/4th amount towards his personal and living expenses, rightly determined the compensation under the head of loss of future income. The learned counsel submits that the Tribunal has awarded just and reasonable compensation. No interference is required.

6 On careful perusal of the evidence, it appears that FIR Exhibit – 29 and spot Panchanama Exhibit – 30 fully corroborate the contentions of the Claimants. FIR Exhibit – 29 was lodged by one Mahesh Patil, who is an eye witness. It appears from the oral and documentary evidence led by the Claimants that the driver of the said Tata truck has driven his vehicle in excessive speed and after overtaking one another vehicle, given dash to the motorcycle of deceased by going to the wrong side of the road. Deceased Milind died on the spot. The Tribunal has rightly recorded the finding in the affirmative to issue No.1. I do not find any fault in the finding recorded to issue No.1. No interference is required.

7 So far as quantum of compensation is concerned, the Claimants have proved the salary bill Exhibit – 41 by examining Witness Kishor, who was serving as a junior clerk in the said Primary

Health Center. As per the salary bill Exhibit – 41, the net salary of deceased Milind was Rs.11,121/- per month. Even Witness Kishor has deposed that by issuing letter Exhibit – 42, the work report details of deceased Milind was called to consider his case for promotion. In view of the same and considering the age of deceased Milind at the time of his accidental death, the Tribunal has rightly added 50% amount of salaried income of deceased Milind towards his future prospects. The Tribunal has awarded just and reasonable amount of compensation by correctly applying the multiplier after deducting 1/4th of the amount towards personal expenses. Though the Tribunal has awarded meager amount under non-pecuniary heads, the Tribunal has awarded substantive amount of compensation under the pecuniary head and as such, no interference is required in the impugned judgment and award.

8 In view of the above discussion, I do not find any merit in the appeal. Hence, the following order:

ORDER

- I) The appeal, is hereby dismissed with costs.
- II) The Respondents / Claimants are permitted to

withdraw the entire amount deposited before this Court.

III) The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm