

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

FIRST APPEAL NO. 500 OF 2014

SUHAS BALKRISHNA KOTKAR
VERSUS
UDESING BHAUSING RAJPUT AND OTHERS

...
Advocate for Appellant : Mr. A. V. Patil, h/f Mr. Sachin A. Pradhan.
Advocate for Respondent No.3 : Mr. M. S. Deshmukh.
...

CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award dated 11th June, 2009 passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon in MACP No.262 of 2001, the original Claimant has preferred this appeal to the extent of quantum.

3 The learned Member of the Motor Accident Claims Tribunal, Jalgaon vide its impugned judgment and award dated 11th June, 2009 directed the Respondent Nos.2 and 3 to pay jointly and severally the compensation to the tune of Rs.2,11,000/- to the Petitioner with interest @7% from the date of petition till realization of the entire amount. Aggrieved by the quantum alone, the Appellant / Claimant has preferred this appeal.

4 The learned counsel for the Appellant / original Claimant submits that the Appellant / Claimant was serving as a Pharmacist on the monthly salary of Rs.7,000/- in a medical shop owned by his uncle. The learned Member of the Tribunal has observed that except the oral evidence of the Petitioner with regard to his employment and the salary on monthly basis, there is no evidence placed on record to substantiate the same. The Tribunal for want of evidence in respect of the income, however, considered the notional income of Appellant / Claimant at Rs.15,000/- per annum. The learned counsel submits that the Appellant / Claimant has produced on record certificate Exhibit – 39. The Registrar of the Maharashtra State Pharmacy Council has issued the said certificate in favour of the Appellant / Claimant certifying therein that the Appellant / Claimant is a registered pharmacist and the entry to that effect is also taken in the register maintained by the Maharashtra State Pharmacy Council. The learned counsel submits that though the Appellant / Claimant has failed to prove to the satisfaction of the Tribunal his salaried income of Rs.7,000/- per month, however, in the above background, the Tribunal has committed error in considering the notional income of Appellant / Claimant to the extent of Rs.15,000/- per annum. The Appellant / Claimant met with an accident at the age of 29 years. The learned

Member of the Tribunal has not considered the future prospects. The learned counsel submits that the impugned judgment and award requires modification to the extent of quantum of compensation by considering the reasonable amount as a notional income of the Appellant / Claimant.

5 The learned counsel for the Respondent / Insurer submits that in absence of any satisfactory evidence about the income, the learned Member of the Tribunal has rightly considered the notional income of Appellant / Claimant to the tune of Rs.15,000/- per annum. The learned counsel submits that there is no substance in the appeal and the appeal is thus, liable to be dismissed.

6 On perusal of the certificate Exhibit – 39, it appears that the Appellant / Claimant is a registered pharmacist since 24th September, 1997. Though the Appellant / Claimant has failed to prove his salary certificate by adducing the evidence to the satisfaction of the learned Member of the Tribunal, the Tribunal ought to have considered his notional income at Rs.3,000/- per month. The Appellant / Claimant was 29 years of age when he met with an accident. The learned Member of the Tribunal should have considered addition in his income towards future prospects. Since the accident had taken place in the year 2001, I consider the notional income of Appellant / Claimant at

Rs.3,000/- per month and addition to the extent of 50% towards his future prospects by considering his age and qualification. Thus, for the purpose of determination of the compensation, the monthly income of the deceased is considered at Rs.4,500/-. The Appellant / Claimant has lost the hearing capacity of both of his ears and as per the permanent disablement certificate Exhibit – 53, the Appellant / Claimant is permanently disabled to the extent of 80%. The learned Member of the Tribunal has rightly considered the said permanent disablement as a percentage affecting the earning capacity and accordingly, worked out the compensation. Except the notional income as stated above, the learned Member of the Tribunal has awarded the just compensation under the non-pecuniary heads. The learned Member of the Tribunal has also committed error in applying the multiplier 18 instead of 17. No interference is required.

7 In view of the above discussion, considering the income of the Appellant / Claimant to the tune of Rs.4,500/- per month, the impugned judgment and award requires modification. In view of the above, the Appellant / Claimant is entitled for the total compensation of Rs.7,54,000/- ($4500 \times 12 \times 17 \times 80\% = 7,34,000 + 20,000 = 7,54,000/-$). Hence the following order:

ORDER

I. The appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 11th June, 2009 passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon in MACP No.262 of 2001, is hereby modified in the following manner.

“The Respondent Nos.2 and 3 are hereby jointly and severally directed to pay the compensation to the tune of Rs.7,54,000/- (Rupees Seven Lacs and Fifty-Four Thousand only) to the Petitioner with interest @7% per annum from the date of petition till realization of the amount.”

III. Award be drawn up as per the above modification.

IV. If any amount is deposited as per the impugned judgment and award passed by the Tribunal, the same shall be adjusted in the award as per the above modification.

V. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]