IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2016 OF 2010

United India Insurance Company Ltd.,
Through its Divisional Manager
Seven Hills, Jalna Road, Aurangabad

...APPELLANT
(Orig. Respondent No.3)

VERSUS

1. Sanjay S/o. Ramrao Gore,
Age: 35 years, Occu.: Reporter &
District Representatives of News Paper
Daily Godatir Samachar,
R/o. Lahoti Compound Wall, Kasturi
Nagar, Latur, Taluka & District Latur,
Now residing at Kadam Galli,
Balbhim Chowk, Beed, Taluka and
District : Beed

2. Chaturbhuj S/o. Laxman Gaikwad,
Age: 28 years, Occu.: Business,
R/o. Budhoda, Taluka and
District : Latur

3. Omprakash S/o. Laxman Gaikwad,
Age: 26 years, Occu.: Business,
R/o. As above.

...RESPONDENTS
(Respondent No.1 –
Original Claimant
Respondent Nos. 2 & 3
Orig. Respondent Nos. 1
& 2)

...

Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. S.K. Naikwade, Advocate for Respondent no.1

...

WITH
CROSS OBJECTION STAMP NO. 3240 OF 2011
IN
FIRST APPEAL NO. 2016 OF 2010

Sanjay s/o. Ramrao Gore,
Age: 35 years, Occu. Reporter &
District Representative of News
paper Daily Godatir Samachar
R/o. Lahoti Compound Wall
Kasturin Nagar, Latur, Tq. &
Dist. Latur, Now at Kadam Galli,
Balbhim Chowk, Tal. And Dist. Beed

...CROSS PETITIONER
(Orig. Claimant)

VERSUS

1. United Indian Insurance Co. Ltd.,
Through its Branch Manager,
Branch Office,
Opp. Gorakshan, Tilak Nagar,
Main road, Latur,
Tq. & Dist. Latur **...Orig. Appellant**

2. Chaturbhuj s/o. Laxman Gaikwad,
Age: 28 years, Occu. Business,
R/o. Budhoda, Tq. & Dist. Latur

3. Omprakash s/o. Laxman Gaikwad
Age: 26 years, Occu.Business,
R/o. Budhoda, Tq. & Dist. Latur

...RESPONDENTS
(Orig. Respondents)

...

Mr. S.K. Naikwade, Advocate for cross petitioner.
Mr. S.G. Chapalgaonkar, Advocate for Respondent No.1.

CORAM: P.R. BORA, J.

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Date of reserving the judgment: 08/06/2017
Date of pronouncing the judgment:04/08/2017

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JUDGMENT:

1. The Insurance Company has filed the present appeal against judgment and award dated 31st of May, 2010 passed by the Motor Accident Claims Tribunal at Beed in M.A.C.P. No.202/2008.

2. Respondent no.1 herein had filed the aforesaid petition claiming compensation on account of injuries caused to him in a vehicular accident occurred on 12th of October, 2007, having involvement of the Hero Honda Motor Cycle bearing registration No.MH-24-G-0919 owned by present respondent no.3 and insured with appellant Insurance Company. It was the contention of respondent no.1, who is hereinafter referred to as the claimant that the person who was driving the offending motor cycle was rash and negligent in driving the same and he gave a dash to his motor cycle and in the accident so occurred, he was seriously injured. It was the further contention of the claimant that because of the injuries caused to him in the alleged accident, he was subjected to undergo a long treatment and incurred 42 per cent permanent disability because of the injuries caused to him in the said accident.

It was the further contention of the claimant that because of the permanent disability incurred by him, he has substantially lost his earning capacity and would also not be able to enjoy the amenities of life as a normal human being. The claimant, therefore, had claimed the compensation amounting to Rs.15,00,000/- (Rs. fifteen lakhs) from the driver, owner and insurer of the offending motor cycle. The petition was resisted by the appellant Insurance company on various grounds. The Insurance Company had raised the plea of contributory negligence on the part of the appellant in occurrence of the alleged accident and has also disputed the nature of injuries, the percentage of disability and the loss of income as alleged by the claimant.

3. In order to substantiate the claim raised by him, the claimant himself deposed before the Tribunal and examined Dr.Manish Deshpande to prove the nature of injuries caused to him as well as the permanent disability incurred by him. As was contended by the claimant, at the relevant time, his age was 32 years and was serving as a District representative of the newspaper 'Godatir

Samachar' and was earning around Rs.12,000/- per month.

4. No oral evidence was adduced on behalf of appellant Insurance Company. Learned Tribunal, after having scrutinized the oral and documentary evidence brought on record before it, held the claimant entitled for total compensation of Rs.9,69,080/- inclusive of No Fault Liability compensation. The compensation was made jointly and severally payable from respondent nos. 1 and 3 i.e. the owner and insurer of the offending motor cycle bearing registration No.MH-24-G-0919. Aggrieved thereby, the Insurance Company has preferred the present appeal.

5. The claimant has filed cross objection in the present appeal claiming enhancement in the amount of compensation as has been awarded by the Tribunal.

6. Shri Chapalgaonkar, learned Counsel appearing for the appellant Insurance Company criticized the impugned judgment and award on various grounds. Learned counsel submitted that the Tribunal has failed in

appreciating that the alleged accident was a head on collision and, in such circumstances, the entire negligence could not have been attributed on the part of the rider of the offending motor cycle. Learned Counsel further submitted that the evidence on record and more particularly the manner in which the alleged accident had happened, which is discernible from the situation on the spot of the occurrence, the claimant was equally negligent and hence responsible for occurrence of the alleged accident. Learned Counsel submitted that the negligence of the claimant is so explicit that no oral evidence was liable to be adduced on that account by the appellant Insurance Company. Learned Counsel submitted that, as such, non adducing of any evidence by the Insurance Company cannot be a reason for rejecting the plea of contributory negligence raised by the appellant.

7. Learned Counsel further submitted that without there being any evidence on record as about the income of the claimant, the Tribunal has held his income to the tune of Rs.9,000/-. Learned Counsel submitted that best possible evidence to prove his income was not brought on

record by the claimant and in absence of any such evidence, the income of the claimant could not have been held by the Tribunal more than the notional income i.e. Rs.3,000/- per month. Learned counsel further submitted that Dr.Manish Deshpande, who has been examined as a witness by the claimant, was not an ophthalmologist and, as such, could not have deposed about the injuries suffered by the claimant to his eye and its consequences. Learned Counsel further submitted that there is absolutely no evidence to show that the claimant had incurred any functional disability. According to the learned Counsel, in the circumstances, no compensation could have been awarded towards future loss of income. Learned Counsel, in order to support his argument, relied on following judgments:

1) 2007 AIRSCW 3591.
Oriental Insurance Co.Ltd. v. Premlata Shukla and Ors.

2) (2011) 2 Mh.L.J. 569, and
Raj Kumar vs. Ajay Kumar and another

3) 2008 AIR SCW 2045
T.O. Antony v. Karvarnan and Ors.

8. Shri Naikwade, learned Counsel appearing for

the claimant, opposed the submission made on behalf of the appellant Insurance Company. Learned Counsel submitted that the Tribunal has rightly held that the alleged accident happened because of sole negligence on the part of the rider of the motor cycle bearing registration No.MH-24-G-0919. Learned Counsel submitted that though, initially, the report was lodged against the claimant also, after investigation in the matter, since no fault was noticed on the part of the claimant, the Police had closed the case against him under Section 169 of Code of Criminal Procedure and has filed charge sheet only against the rider of the motor cycle bearing registration No.MH-24-G-0919. Learned counsel submitted that the situation on the spot supports the case of the claimant and not of the Insurance Company. Learned Counsel further submitted that when a specific plea was raised by the appellant Insurance Company alleging negligence on the part of the claimant, it was incumbent on the part of the Insurance Company to adduce positive evidence to substantiate the plea raised by it. Learned Counsel submitted that the Insurance Company admittedly has not adduced any evidence. In the circumstances, according to the learned Counsel, the Tribunal has not committed any error in holding the rider of the motor cycle bearing registration No.MH-24-G-0919 solely responsible for occurrence of the alleged accident.

9. Learned Counsel submitted that, having regard to the evidence as has been placed on record by the claimant, the amount of compensation as has been awarded by the Tribunal is inadequate. Learned Counsel submitted that the Tribunal has failed in considering that the physical disability incurred by the appellant may be to the extent of 42 per cent, the evidence as has been produced on record by the claimant, sufficiently, establishes that the functional disability incurred by the claimant was much more than that and may be considered to be hundred per cent. Learned Counsel submitted that, as such, the compensation awarded towards future loss of income is inadequate.

10. Learned Counsel further submitted that the Tribunal has awarded a meager sum of Rs.5,000/- for mental pain and agony. Learned Counsel submitted that

the amount under the said head needs to be substantially enhanced. Learned Counsel, therefore, prayed for dismissal of the appeal filed by the appellant Insurance Company and to allow the cross objection and, consequently, to enhance the amount of compensation adequately.

11. I have carefully considered the submissions advanced by the learned Counsel appearing for the appellant Insurance Company and the learned Counsel appearing for the original claimant. I have also perused the impugned judgment, the evidence on record and other material placed on record.

12. The first objection as has been raised by the appellant Insurance Company is that of contributory negligence of the claimant in occurrence of the alleged accident. As was submitted by the learned counsel for the appellant Insurance Company, since the alleged accident was head on collision, no hundred per cent negligence could have been attributed on the part of the rider of the motor cycle bearing registration No.MH-24-G-

0919 insured with the appellant Insurance Company. In order to support the contention so raised, the learned Counsel relied upon the judgment of the Honourable Apex Court in the case of 2008 AIR SCW 2045 (T. O. Antony vs. Karvarnan and Ors). Inviting my attention to the discussion made by the Honourable Apex Court in paragraph no.8 of the said judgment, it was sought to be canvassed by the learned Counsel that from the material on record it can reasonably be inferred that the claimant was also not diligent in plying his motor cycle and has failed in avoiding the alleged accident and, as such, cannot be absolved from his liability in occurrence of the alleged accident. Learned Counsel submitted that the claimant has agreed in his cross examination that the road on which the accident happened was a road of heavy traffic and it was not possible to drive a vehicle on the said road at a high speed. In the aforesaid context, it was submitted by the learned Counsel that some blame needs to be attributed on the part of the claimant also.

13. Per contra, it was submitted by the learned Counsel appearing for the claimant that the Police has

conducted a thorough investigation in the matter and ultimately has completely absolved the claimant from the allegation of negligence on his part in occurrence of the alleged accident. Learned Counsel submitted that initially an offense was registered against the claimant but, ultimately, the Police filed report under Section 169 of the Code of Criminal Procedure. It was also argued by the learned Counsel that in absence of any positive evidence from the Insurance Company as about the negligence on the part of the claimant in occurrence of the alleged accident, the Tribunal has rightly turned down the objection raised by the Insurance Company and has correctly held the rider of the offending motor cycle solely responsible for causing the alleged accident.

14. Admittedly, the Insurance Company has not adduced any evidence to substantiate the plea raised by it alleging contributory negligence on the part of the claimant. The question, however, arises, what sort of evidence the Insurance Company could have produced in that regard. No oral evidence could have been adduced by the Insurance Company. The only course available for

the Insurance Company was to bring some material through the cross examination of the witnesses examined by the claimant and to analyse the documentary evidence available on record in the form of Police papers pertaining to the alleged accident. Referring to the sketch of the spot panchnama, it was, therefore, sought to be canvassed by the learned Counsel for the appellant Insurance Company that it demonstrates the fact of head on collision accident. The contention of the learned Counsel, however, is difficult to be accepted in view of the fact that the spot was shown by the brother of respondent no.2 i.e. the rider of the offending motor cycle. The first information report was also initially lodged by him. The material on record shows that after thorough investigation, the Police reached to the conclusion that in occurrence of the alleged accident, there was no negligence noticed on the part of the claimant. I do not see any reason to disagree with the conclusion so recorded by the investigating machinery. Evidence on record shows that the offending motorcycle was being driven by respondent No.2 from the wrong-side. Claimant and PW-2 Shrikant Dombe, both have specifically deposed that respondent No 2, though was coming from the opposite direction, was riding his motor cycle from the side by which claimant was proceeding. Thus respondent No.2 was plying his motor-cycle from the wrong-side. Evidence of both these witnesses has remained un-shattered. As noted earlier in the police investigation also it is revealed that no blame can be attributed on part of the claimant. In absence of any contrary evidence on record, merely on the allegation that it was head on collision accident, no negligence can be attributed on the part of the claimant. It does not, therefore, appear to me that the Tribunal has committed any error in recording a finding that the alleged accident happened because of the sole negligence of the rider of the offending motor cycle. No interference is warranted in the finding so recorded.

15. The next issue which falls for my consideration is whether the amount of compensation as awarded by the Tribunal is unjust. According to the appellant Insurance Company, the Tribunal has awarded unreasonable amount of compensation though there was no such evidence on record. As against it, it is the claim of the claimant that the amount of compensation as awarded is inadequate and

the same needs to be adequately enhanced.

16. As contended in the claim petition, claimant was serving as the District Representative of Godatir Samachar and was drawing salary of Rs.12,000/- per month. He has also produced on record the salary certificate in that regard. The claimant did not examine any witness to prove the said salary certificate. The Tribunal, however, observing that the claimant is performing a job of journalist held his income to the tune of Rs.9,000/- per month. In this context, it was argued by Shri Chapalgaonkar, learned Counsel appearing for the Insurance Company that when there was no cogent and sufficient evidence brought on record by the claimant, his income must have been assessed by applying the criteria of notional income and thus his income must have been held to the tune of Rs.3,000/- per month. The submission of the Insurance Company is difficult to be accepted. Admittedly, the claimant did not examine any witness to prove his salary income. However, there is no denial to the fact that the claimant is serving as the District Representative of Godatir Samachar. In the cross

examination of the claimant, no such suggestion has been given to the claimant that he is not working as a journalist and / or District Representative of Godatir Samachar. In the circumstances, it does not appear to me that the Tribunal has committed any error in holding the salary of the claimant to the tune of Rs.9,000/- per month.

17. Further, it was sought to be canvassed by the learned Counsel appearing for the appellant Insurance Company that since the claimant has failed to prove functional disability, no such compensation of Rs.5,14,080/- was liable to be awarded towards loss of income due to permanent disablement. Having regard to the evidence on record, the objection so raised must be rejected. It has come on record through the evidence of Dr.Manish Deshpande that in the alleged accident, claimant suffered severe facial injuries; his both jaws were fractured and the teeth were broken. Dr. Deshpande has also deposed that the claimant lost his right eye in the alleged accident and it was required to be removed. Dr. Deshpande has also deposed that the claimant had suffered disfigurement to a greater extent. Merely

because Dr. Deshpande is not an Opthalmic Surgeon, the report submitted by him of examination of the claimant cannot be discarded. Moreover, ample documentary evidence is placed on record by the claimant which demonstrates that the claimant lost his right eye in the alleged accident. It is not in dispute that the claimant is working as a journalist. Losing of one eye would certainly have an effect on his ability to work as a journalist. The fracture to jaw and the disfigurement will also have some impact on his working capacity. As such, it does not appear to me that the Tribunal has committed any error in determining the amount of compensation under the head of permanent disability resulting in causing loss of income, holding the percentage of the said disability to the extent of 42 per cent. On the contrary, it is revealed that the Tribunal has wrongly deducted one third of the total income of the claimant towards his personal expenses while determining the amount of compensation under the aforesaid head. As has been held by the Honourable Apex Court in the case of Raj Kumar Vs. Ajay Kumar and another (2011 2 Mh.L.J. 569), in the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to the claimant, (as contrasted from loss of dependency calculated in fatal accident, where the dependent family members of the deceased are the claimants). Therefore, there is no need to deduct one third or any other percentage from out of the personal and living expenses. Learned Counsel for the Insurance Company was fair enough in submitting that the deduction towards personal expenses is to be made only in cases of fatal accidents and cannot be applied in the injury claims. It is, thus, evident that the compensation as calculated by the Tribunal by deducting one third of the total income of the claimant towards his personal expenses will have to be redetermined and consequently, will have to be adequately enhanced.

18. As noted earlier, the Tribunal has held the income of the claimant to the tune of Rs.9,000/- per month which comes to Rs.1,08,000/- per annum. The Tribunal has applied the multiplier of 17 while determining the amount of compensation towards future loss of income. Having regard to the age of the claimant, the appropriate multiplier will be of 16 and not of 17.

Applying the said multiplier the amount of compensation comes to Rs.7,25,760/- (Rs.1,08,000/- x 16 = Rs.17,28,000/- and 42 per cent thereof = 7,25,760/-).

19. The Tribunal has awarded a sum of Rs.4,50,000/- to the claimant towards medical expenses incurred by him, the bills of which are produced on record. The appellant Insurance Company has not seriously disputed the amount of compensation awarded under the head of medical expenses. I, therefore, do not see any reason to cause any interference in the amount so awarded under the said head.

20. Further, the Tribunal has awarded compensation of Rs.5,000/- to the claimant for mental pain and agony. The compensation so awarded by the Tribunal is wholly unjust and inadequate. The Tribunal has further not awarded any amount towards loss in enjoying the amenities of life by the claimant. The claimant has sufficiently established that because of the injuries caused to him in the accident, his face was disfigured. The claimant has also established that he permanently lost his

right eye because of the injuries caused to him in the said accident. It need not be stated that facial features are very important for every individual. Having regard to the injuries suffered by the claimant, it is quite evident that he may not be able to enjoy the amenities of life as a normal person. Permanently losing one eye would also have a very serious impact on the future life of the claimant. In the circumstances, the compensation as awarded by the Tribunal of Rs.5,000/- is wholly unjust and inadequate. Considering the overall circumstances, I deem it appropriate to award the compensation of Rs.2,00,000/- (Rs. two lakhs) towards mental pain and agony as well as disfigurement of the face and towards loss of amenities in life. The claimant is, thus, held entitled to the total compensation of Rs.13,75,760/- inclusive of No Fault Liability compensation. In the facts and circumstances of the case this would be just and fair compensation payable to the claimants. The Cross Objection filed by the claimant, therefore, needs to be allowed to the aforesaid extent.

21. For the reasons stated above, following order is passed:

ORDER

1. First Appeal No.2016/2010 is dismissed.

2. The Cross Objection Stamp No.3240/2011 is partly allowed. The appellant is held entitled to the total compensation of Rs.13,75,760/- (Rs. thirteen lakhs, seventy five thousand, seven hundred and sixty). The amount of compensation is thus enhanced from Rs.9,69,080/- to Rs.13,75,760/- inclusive of the No Fault Liability amount.

3. The claimant is held entitled for the interest at the rate of 9 per cent per annum on the enhanced amount of compensation from the date of filing the Cross Objection i.e. 3rd February, 2011, till realization of the said amount.

4. The appellant is also held entitled for proportionate costs.

5. Deficit Court fee, if any, be recovered from the claimant.

6. Award be modified accordingly.

7. The amount deposited by the Insurance Company be transmitted to the Tribunal.

(P.R.BORA)
JUDGE

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AGP/2016-10fa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2016 OF 2010
WITH
CROSS OBJECTION STAMP NO.3240 OF 2011
IN
FIRST APPEAL NO.2016 OF 2010

Date of decision: 04.08.2017.

For approval and signature

HON'BLE MR.JUSTICE P.R. BORA

1.	Whether the Reporters of Local Papers may be allowed to see the Judgment ?	Yes
2.	To be referred to the Reporter or not ?	Yes/No
3.	Whether Their Lordships wish to see the fair copy of the Judgment ?	No.
4.	Whether this case involves a substantial? question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?	No.
5.	Whether it is to be circulated to the Civil Judges ?	No.
6.	Whether the case involves an important question of law and whether a copy of the Order should be sent to Bombay, Goa and Nagpur Office ?	No

Private Secretary
AGP/2016.10FA