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

FIRST APPEAL NO.:3226 OF 2015

UNITED INDIA INSURANCE CO. LTD.
VERSUS
SMT. MANISHA SANTOSH DHAMALE AND OTHERS

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Mr. Atul B. Gatne, Advocate for Appellant.
Mr. Rajendra K. Temkar, Advocate for Respondent Nos.1 to 5.

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AND

FIRST APPEAL NO.:1443 OF 2016

SMT. MANISHA SANTOSH DHAMALE AND OTHERS
VERSUS
SHANKARA RAM HIRA RAM AND ANOTHER

***

Mr. Rajendra K. Temkar, Advocate for Appellants.
Mr. Atul B. Gatne, Advocate for Respondent No.2.

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CORAM : **V. K. JADHAV, J.**
DATE : 10th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Sangamner dated 16th April, 2014 in MACP No.43 of 2010, the Respondent / Insurer has preferred First Appeal No.3226 of 2015 and original Claimants have preferred First Appeal No.1443 of 2016 for

enhancement in the compensation.

3 Brief facts giving rise to these two appeals are as follows:

a) On 3rd November, 2009, deceased Santosh was driving his tempo loaded with onion. He was coming to Pune. On way at about 06:00 am within the limits of village Panmala, Taluka Khed, one truck bearing registration No.RJ-19-01-G-3783 came in high speed from the opposite direction. The said truck gave dash to the tempo. In consequence of which, deceased Santosh had sustained severe injuries and died on the spot.

b) The Claimants / legal representatives of deceased Santosh approached to the Motor Accident Claims Tribunal, Sangamner by fling MACP No.43 of 2010 for grant of compensation under the various heads. It has been contended in the claim petition that deceased Santosh was doing the business of transportation and though two motor vehicles owned and possessed by him were standing in the name of his father (Petitioner No.4), deceased Santosh was looking after the business and even he has repaid the loan of financial institution availed for the purpose of purchasing the said motor vehicles. It has been contended that the monthly income of deceased was Rs.40,000/- to Rs.50,000/- and he was 27 years of age at the time of his accidental death. The Claimants accordingly claimed Rs.20,00,000/- with interest.

c) The Respondent / owner has not appeared in the claim petition though duly served and therefore, the hearing of the claim petition ordered to proceed *ex-parte* against him.

d) The Insurer has strongly resisted the claim petition by filing the written statement. It has been contended that the accident had taken place due to the negligence on the part of deceased Santosh and that the Claimants have claimed exorbitant amount of compensation. It has been contended that the driver of the offending truck was not holding the valid and effective driving licence and as such, there was a breach of specified conditions of the policy.

e) The Claimants have adduced oral and documentary evidence in support of their contentions. The Insurer has not adduced any evidence. The learned Member of the Tribunal vide its impugned judgment and award dated 16th April, 2014 partly allowed the claim petition and thereby directed the Respondents to pay jointly and severally Rs.8,30,000/- to the Claimants with interest at the rate of 8% per annum from the date of petition till realization of the entire amount. Hence, these two appeals as mentioned above.

4 The learned counsel for the Insurer submits that the Insurer restricts the challenge to the judgment and award passed by the Tribunal to the extent of negligence and quantum of compensation. The learned counsel submits that there is no specific pleading with regard to the non-joinder of necessary parties and therefore, the said ground is not pressed. The learned counsel submits that there was head on collision between the vehicle tempo being driven by deceased Santosh and the vehicle truck. In view of the said head on collision and due to the impact, the said truck left its side and went to the wrong

direction of the road. The learned counsel submits that the tempo being driven by deceased Santosh, was in the middle portion of the road and as such, indicates that there was head on collision between the two vehicles. The Tribunal has incorrectly recorded the finding that the driver of the truck has driven the vehicle in rash and negligent manner and gave dash to the tempo by going to the wrong direction of the road.

The learned counsel for Insurer submits that though there is no income proof of deceased Santosh, the Tribunal has considered his notional income at Rs.5,000/- per month instead of Rs.3,000/- per month. Petitioner No.4, who is the father of deceased Santosh, is looking after the transport business as well as the agricultural land. As per the record placed before the Tribunal, the father of deceased i.e. Petitioner No.4, is the owner in possession of both the vehicles and even the loan from the financial institution was availed for purchasing those vehicles by Petitioner No.4. In such circumstances, the Tribunal ought to have considered the notional income of deceased Santosh at Rs.3,000/- only. Thus, the learned Member of the Tribunal has awarded exorbitant amount of compensation under the head of loss of future income.

5 The learned counsel for Claimants submits that the

contents of spot Panchanama Exhibit – 27 unmistakenly point out that the tempo being driven by deceased, was at the correct left side of the road, whereas, the truck given dash to the tempo by going to the wrong side of the road. The Tribunal has correctly recorded the finding to that effect and accordingly, held that the driver of the truck alone is responsible for the accident. So far as the quantum of compensation is concerned, the learned counsel submits that deceased Santosh was 27 years of age at the time of his accidental death. Petitioner No.4 was more than 55 years of age. Since the agricultural land possessed by the family were standing in the name of Petitioner No.4, the said two motor vehicles were purchased in the name of Petitioner No.4 by availing the loan from the financial institution, deceased Santosh being only son, looking after the transport business entirely. It has come in the evidence of Claimant / wife and Claimant No.4 that after the accidental death of deceased Santosh, the family has sold those two vehicles as there was nobody in the family to look after the said business. The learned counsel submits that on the backdrop of these facts, the Tribunal ought to have considered the income of deceased as claimed by the Claimants. The learned counsel submits that the Tribunal has awarded the meager amount under the non-pecuniary heads such as loss of love and affection, loss of consortium, transportation expenses and funeral expenses. The Tribunal has not awarded any amount under the head of loss of estate. The learned counsel in order to substantiate his contentions placed reliance in the case of ***New India Assurance Co. Ltd., Vs. Yogesh Devi and others***, reported in, ***2012 ACJ 702***.

6 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has correctly recorded the finding that the driver of the truck was alone responsible for the accident and none else. It appears from the spot Panchanama Exhibit – 27 that the accident had taken place on Pune-Nashik road, which is south-north in direction at the spot of accident. The width of the said road is 28 feet having 5 feet mud pan on both the sides of the road as mentioned in the spot Panchanama. It has been specifically mentioned in the contents of spot Panchanama that the vehicle tempo loaded with onion, was found on its correct left side of the road facing towards Pune. It has been specifically mentioned in the contents of spot Panchanama that the said truck went to the wrong side of the road and gave dash to the said tempo. On the basis of the aforesaid documentary evidence, the learned Member of the Tribunal has rightly held that the driver of the truck was responsible for the accident. No interference is required in the said

finding.

7 So far as the quantum of compensation is concerned, it appears that even on the date of accident, deceased Santosh was driving his tempo loaded with onion and met with an accident as aforesaid. Though the vehicle involved in the accident and another vehicle as mentioned in the claim petition were standing in the name of Petitioner No.4, I do not think that deceased Santosh was driving the vehicle involved in the accident as a driver. I found much substance in the contentions raised by the Claimants that deceased Santosh being the elder son was looking after the transportation business. The Claimants have produced on record the extract of repayment of loan availed from the financial institution for purchasing those vehicles. The said extract is marked as Exhibits – 59 to 64. Such a repayment of the loan by installments is possible only when somebody is looking after the transportation business. However, the Claimants have not brought on record any documentary evidence to substantiate their contentions that deceased Santosh was earning Rs.40,000/- to Rs.50,000/- per month from the said transportation business. On perusal of the said extract of repayment of the loan Exhibits – 59 to 64, it appears that prior to the death of deceased Santosh preceding six moths, the loan amount was repaid by monthly installment of Rs.13,370/-. In view of

the same, in my opinion, the Tribunal has considered the income of deceased Santosh at a lower side. Even the Tribunal has considered the income of deceased Santosh as if he was working as a driver on the tempo involved in the accident. It has come in the evidence of Claimants that deceased Santosh had engaged one driver to drive another vehicle standing in the name of his father on monthly salary of Rs.5,000/-. In view of the above and the fact that deceased Santosh met with an accidental death at the age of 27 years, his income is required to be considered at Rs.10,000/- per month inclusive of addition of future prospects to the extent of 50% in consonance with his age at the time of his accidental death. Thus, the compensation awarded by the Tribunal is required to be redetermined.

8 So far as the compensation awarded by the Tribunal under the non-pecuniary heads are concerned, even though Claimant No.1 / widow was 23 years of age at the time of accidental death of her husband and Claimant Nos.2 and 3 are the minor children aged 4 and 2 and 1/2 years respectively, the Tribunal has awarded meager amount under the said heads. The Tribunal has awarded Rs.15,000/- towards consortium and Rs.5,000/- each to the minor Claimants for loss of love and affection. Claimant No.1 is entitled for an amount of Rs.1,00,000/- for loss of consortium and Claimant Nos.2 and 3 are

entitled for an amount of Rs.20,000/- each towards loss of love and affection. The Tribunal has also awarded meager amount under the head of transportation and funeral expenses. The Claimants are entitled for an amount of Rs.25,000/- under both the heads as against Rs.15,000/- (5000 + 10000) as awarded by the Tribunal. The Tribunal has rightly awarded Rs.10,000/- towards loss of estate. In view of the above discussion, the break up of compensation under the heads as discussed above can be broadly categorized as under:

Sr	**Particulars of the head**	**Amount in Rupees**
1)	Towards loss of future income (7500 (after deduction 1/4th towards personal accident) x 12 x 17) (as against Rs.7,65,000/- awarded by Tribunal)	Rs.15,30,000/-
2)	Towards loss of consortium (as against Rs.15,000/- awarded by Tribunal)	Rs.1,00,000/-
3)	Towards loss of love and affection (Rs.20,000/- each for Claimant Nos.2 & 3) (as against Rs.5,000/- each awarded by Tribunal)	Rs.40,000/-
4)	Towards transpiration and funeral expenses (as against Rs.15,000/- awarded by Tribunal)	Rs.25,000/-
5)	Towards loss of estate	Rs.10,000/-
	Total =	**Rs.17,05,000/-**

9 The Claimants are entitled for the total amount of compensation as worked out hereinbefore. Hence, the following order:

O R D E R

I. First Appeal No.3226 of 2015 (United India Insurance Co. Ltd. Vs. Smt. Manisha w/o. Santosh Dhamale and others), is hereby dismissed.

II. First Appeal No.1443 of 2016 (Smt. Manisha w/o. Santosh Dhamale and others Vs. Shankara Ram Hira Ram and another), is hereby partly allowed with proportionate costs.

III. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Sangamner dated 16th April, 2014 in MACP No.43 of 2010, is hereby modified in the following manner:

> “Petitioner Nos.1 to 5 are entitled to the amount of Rs.17,05,000/- (Rupees Seventeen Lacs and Five Thousand Only) towards compensation from Respondent Nos.1 and 2 and Respondent Nos.1 and 2 jointly and severally do pay an amount of Rs.17,05,000/- (Rupees Seventeen Lacs and Five Thousand Only) to Petitioner Nos.1 to 5 with interest at the rate of 8% per annum from the date of petition i.e. from 9th March, 2010 till realization of the entire

amount.”

IV. Rest of the judgment and award passed by the Tribunal stands confirmed.

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

VI. In view of the judgment and award passed by the Tribunal, if any amount is deposited before this Court pending appeal, the Claimants are entitled to withdraw the same.

VII. The learned counsel for Insurer prays for suspension of the order passed by this Court for a period of eight weeks. Deceased Santosh met with an accident in the year 2009 and the Claimants i.e. young widow, minor children and aged parents, have not received any amount of compensation except NFL amount. In view of the same, the request is refused.

VIII. Both the appeals are accordingly disposed of.

IX. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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