

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

FIRST APPEAL NO. 3693 OF 2016

UNITED INDIA ASSURANCE CO. LTD., THROUGH ITS DEPUTY
MANAGER TP HUB, RAHUL NARAYAN KULKARNI
VERSUS
SALEEMBI DAUT SHAIKH AND OTHERS

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Advocate for Appellant : Mr. Swapnil S. Rathi.

Advocate for Respondent Nos.1 to 3 : Mr. Sushant B. Choudhari.

...

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

DATE : 06th March, 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, Beed dated 17th June, 2016 in MACP No.182 of 2014, original Respondent No.2 / Insurer has preferred this appeal to the extent of contributory negligence on the part of deceased and quantum.

3 Brief facts giving rise to the present appeal are as follows:

- i) On 1st June, 2014 at about 02:15 pm, deceased Shaikh Daut alongwith his friend was proceeding by Ahmednagar–Jamkhed road on his

motorcycle. Deceased was riding the motorcycle and his friend was pillion rider. On way, one Indica car bearing registration No.MH-12-JZ-0448 came from the opposite direction and gave dash to the motorcycle. In consequence of which, deceased Shaikh Daut sustained multiple injuries all over his body and died on the spot. The legal representatives of deceased Shaikh Daut approached the Tribunal by filing MACP No.182 of 2014 for grant of compensation under the various heads. It has been contended in the said application that the driver of the Indica car had driven the car in rash and negligent manner and caused the accident. Deceased Shaikh Daut was 45 years of age at the time of his accidental death. He was earning more than Rs.1,00,000/- per annum from his agricultural land. He was also the owner of one Bolero Pick-up van and from the said business of transporting, he was earning Rs.12,000/- to Rs.15,000/- per month.

The Claimants were entirely depending upon his income.

- ii) Respondent No.1 / owner has strongly resisted the claim by filing the written statement. Though Respondent No.1 has admitted the accident, however, contended that the deceased was riding the motorcycle in very high speed and he could not control his motorcycle and dash against the car.
- iii) The Appellant / Insurer has also strongly resisted the claim by filing the written statement. The Appellant / Insurer has denied the rash and negligent driving on the part of Respondent No.1. It has been contended that the driver of the car was not holding the valid and effective driving licence at the time of accident and the claim is also suffering from non-joinder of necessary parties.
- iv) The Claimants have adduced oral and documentary evidence in support of their

contentions. The Respondents have not adduced any evidence. The learned Member of the Tribunal vide its impugned judgment and award held that Respondent Nos.1 and 2 jointly and severally liable to pay the compensation of Rs.14,01,992/- inclusive of compensation under no fault liability with interest @7% per annum from the date of application till realization of entire amount. Being aggrieved by the same, the Insurer / original Respondent has preferred the present appeal.

4 The learned counsel for Appellant / Insurer submits that there was head on collision between the car and the motorcycle and the deceased had contributed the negligence to considerable extent. However, the learned Member of the Tribunal has not considered this aspect and erroneously held that the car driver alone responsible for the accident. The learned counsel submits that the Claimants have failed to prove the income of deceased Shaikh Daut from his transport business. The learned Member of the Tribunal has also not considered the income certificate

Exhibit – 39 issued by Witness No.3 Rauf Abdul Rajjak. Even though there is no satisfactory evidence about the income of deceased from his transport business, the Tribunal has considered his income at Rs.12,000/- as claimed by the Claimants. Furthermore, though the agricultural land is owned and possessed by the family jointly, the Tribunal has erroneously considered the supervision charges at Rs.2,000/- per month and accordingly awarded the compensation. The learned Member of the Tribunal has awarded exorbitant amount of compensation under the head of loss of future income. The learned counsel for the Appellant submits that the learned Member of the Tribunal has erroneously applied the multiplier 14 instead of 13. It has come in the evidence that deceased was 48 years, 1 month and 29 days old at the time of his accidental death.

5 The learned counsel for the Respondents / original Claimants submits that the Claimants have examined eye witness to the accident and he has deposed about the manner in which the accident had taken place. On the basis of his evidence, the learned Member of the Tribunal has rightly held that the driver of the car was alone responsible for the accident and none else. The learned

counsel submits that deceased Shaikh Daut was doing the transport business. He was having one Bolero Pick-up van bearing registration No.MH-23-W-470. He was the owner in possession of the said vehicle. The Claimants have also examined the Manager of one Sai Road Lines Transport, Ahmednagar. The said transport company used to pay Rs.22,500/- per month to deceased Shaikh Daut for taking the said Bolero vehicle on hire basis. The income certificate from the transport business is thus, produced by Witness No.3 Rauf Abdul Rajjak and the same is marked as Exhibit – 39. Thus, considering the totality of evidence in respect of the income from the transport business, the Tribunal has considered the income of deceased Shaikh Daut from his transport business at Rs.12,000/-. Furthermore, the Claimants have also produced on record the revenue record alongwith copy of Namuna No.8. Even though the agricultural land is owned jointly by the family, the evidence is adduced that the deceased was supervising the agricultural activities. The learned Member of the Tribunal has therefore, rightly considered the loss in the agricultural income in the form of supervision on account of untimely death of deceased Shaikh Daut. The learned counsel submits that even though the

Claimants have not preferred any appeal or cross-objection, it is apparent on the face of record that the Tribunal has not awarded just and reasonable compensation under the non-pecuniary heads. No interference is required.

6 On careful perusal of the pleadings, evidence adduced by the Claimants and the judgment and award passed by the Tribunal, it appears that the Claimants have produced on record copy of FIR Exhibit – 24. The Claimants have also examined one Masruddin Osman Shaikh, who has lodged the said FIR at Exhibit – 24 as an eye witness. At the time of accident, he was also riding the motorcycle and in front of his motorcycle, the motorcycle which was driven by the deceased, was proceeding. He has deposed that the car coming from the opposite direction was in speed and given forceful dash to the motorcycle driven by the deceased. There is nothing in his cross-examination to disbelieve his evidence or to draw any other inference. The learned Member of the Tribunal has therefore, rightly recorded the finding in the affirmative and thereby held that the driver of the car was alone responsible for the accident.

7 So far as quantum is concerned, it appears that in para

16 of the judgment, the learned Member of the Tribunal, has expressed his reluctance to rely upon the income certificate Exhibit – 39. However, the fact remained that deceased Shaikh Daut was the owner in possession of Bolero Pick-up van bearing registration No.MH-23-W-470 and he used to engage it for transportation of goods as and when required. Furthermore, the Tribunal is justified in considering the loss in the agricultural income due to lack of experience and skilled supervision on account of untimely death of deceased Shaikh Daut. The learned Member of the Tribunal has considered the income of deceased Shaikh Daut from his transport business at some higher side. Thus, considering the evidence on record, it would be just and appropriate to consider the income of deceased Shaikh Daut from his transport business at Rs.8,000/- inclusive of the future prospects. The learned Member of the Tribunal has rightly considered the loss in the agricultural income at Rs.2,000/- per month corresponds to Rs.24,000/- per annum. It further appears the Tribunal has erroneously applied the multiplier 14 instead of 13 though it has come in the evidence that deceased Shaikh Daut was more than 48 years of age at the time of his accident. It appears that the learned Member of the Tribunal has

awarded the just and reasonable compensation under the other heads. No interference is required in that.

8 In view of the above, the judgment and award passed by the learned Member of the Tribunal requires modification to the extent of compensation awarded under the head of loss of future income. As discussed above, if the income of deceased Shaikh Daut is considered at Rs.10,000/- per month from both the sources, his annual income comes to Rs.1,20,000/- and after deducting 1/3rd of the amount towards his personal and living expenses, the loss in future income comes to the tune of Rs.80,000/- per annum. By applying the multiplier 13, the amount of compensation under the head of loss of future income comes to Rs.10,40,000/- for which the Claimants are entitled.

9 Thus, the break up of compensation under the different heads, which can be broadly categorized as under:

Sr. No.	Particulars of the head	Amount in Rupees
1)	Towards loss of future income (80000 x 13) (As against Rs.13,51,992/- awarded by Tribunal)	Rs.10,40,000/-
2)	Compensation under all non-pecuniary heads (As against Rs.50,000/- awarded by Tribunal.)	Rs.1,00,000/-
	Total =	Rs.11,40,000/-

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

ORDER

- I. The appeal, is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Beed dated 17th June, 2016 in MACP No.182 of 2014, is hereby modified in the following manner:

“Respondent Nos.1 and 2 jointly and severally shall pay the compensation of Rs.11,40,000/- (Rupees Eleven Lacs and Forty Thousand only) inclusive of the compensation under the no fault liability to the Claimants alongwith interest @7% per annum from the date of filing of the application till satisfaction of the entire amount”

- III. Rest of the judgment and award stands confirmed.

- IV. Award be drawn up as per the above modification.
- V. Needless to say that if any amount is paid as per the judgment and award passed by the Tribunal, the same shall be adjusted in the award as per the above modification.
- VI. The Appellant has deposited the entire amount before this Court. The Claimants are entitled for the amount to the extent of the modified award and the remaining amount in excess, if any, shall be refunded to the Appellant / Insurer.
- VII. The appeal is accordingly disposed of.
- VIII. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]