

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

22 FIRST APPEAL NO. 306 OF 2017

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
SANGITA UTTAM DORGE AND OTHERS

...

Advocate for Appellant : Mr. Aniruddha S. Usmanpurkar.
Advocate for Respondent Nos.1 to 6 : Mr. Ram B. Deshpande.
Advocate for Respondent Nos.7 & 8 : Mr. R. P. Phatake.

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WITH

FIRST APPEAL NO.:302 OF 2017

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
HIRABAI RAOSAHEB SONKAMBALE AND OTHERS

...

Advocate for Appellant : Mr. Aniruddha S. Usmanpurkar.
Advocate for Respondent Nos.1 to 3 : Mr. Ram B. Deshpande.
Advocate for Respondent Nos.4 & 5 : Mr. R. P. Phatake.

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

DATE : 27th June, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and awards passed in
MACP No.284 of 2014 and MACP No.285 of 2014 dated 18th March,
2016 by learned Member of the Motor Accident Claims Tribunal,

Newasa, the original Respondent / Insurer has preferred these two separate appeals.

3 The aforesaid motor accident claims arises out of one and the same accident and as such, these two appeals are taken together and decided by this common order.

4 Brief facts giving rise to the present appeals are as follows:

- i) On 22nd April, 2012 deceased Uttam was proceeding on his motorcycle alongwith one Mahadu and one Sonkamble. Deceased Uttam was driving the motorcycle in moderate speed keeping left side of the road. On way, one truck bearing registration No.MH-17-A-7270 came from the opposite direction in a speed and gave a dash to the motorcycle of the deceased. In consequence of which, all the three persons as aforesaid died on the spot.
- ii) The Claimants / legal representatives of deceased Uttam approached the Tribunal by filing MACP

No.285 of 2014 for grant of compensation under the various heads. Similarly, the Claimants / legal representatives of deceased Raosaheb approached the Tribunal by filing MACP No.284 of 2014 for grant of compensation under the various heads. It has been contended by the Claimants in MACP No.285 of 2014 that deceased Uttam was earning from agricultural land and he was also doing the milk business. It has also been contended that deceased Uttam had driving licence to drive heavy goods vehicle and thereby he was earning Rs.20,000/- per month from both the sources. He was the breadwinner of the family and the Claimants were entirely depending upon his income.

- iii) The Claimants in MACP No.284 of 2014 submits that deceased Raosaheb was running grocery and cutlery store and also a chilly crusher in the village and he was earning Rs.20,000/- per month and was maintaining the family.

- iv) Respondent / owner has not disputed the happening of the accident. However, it has been contended that the accident has taken place on account of rash and negligent driving on the part of the rider of the motorcycle. It has been contended that deceased Uttam was carrying heavy luggage in the motorcycle and as such, he lost the balance and dashed against the truck. In the alternate it has been submitted that the vehicle truck is duly insured with Respondent No.3 / Insurer and as such, the Insurer is liable to satisfy the award if passed against the Respondent / owner.
- v) The Appellant / Insurer has strongly resisted both the claim petitions by filing the written statements. It has been contended that the driver of the Truck was not responsible for the accident and deceased Uttam himself was responsible for the accident. It has also been contended that the owner of the offending vehicle committed breach of the conditions of the policy in the from that Respondent / driver of the truck was not having

valid and effective driving licence to drive the truck at the relevant time. It has also been contended that the vehicle motorcycle was driven triple seat and as such it is a clear case of contributory negligence.

- vi) The Claimants in both the cases have adduced documentary evidence in support of their contentions. Respondents including the Appellant / Insurer have not adduced any evidence. The learned Member of the Tribunal by aforesaid judgment and awards passed on 18th March, 2016, directed the Respondents to pay the compensation. However, by accepting the defence raised by the Appellant / Insurer about breach of the conditions of the policy, directed the Insurer to pay the amount of compensation first and then recover the same from the Respondent / owner. Being aggrieved by the judgment and awards passed by the Tribunal to the extent of negligence and the quantum of compensation as awarded, the original Respondent / Insurer has

preferred these two separate appeals. The Respondent / Insurer has also preferred these two appeals against the order passed by the Tribunal directing the Appellant / Insurer to pay the compensation and recover it from the Respondent / owner.

5 The learned counsel for Appellant / Insurer submits that as per the contents of the spot Panchanama, the accident had taken place at the middle portion of the road and as such, it is a clear case of head on collision between two vehicles. The learned counsel submits that deceased Uttam was riding the motorcycle alongwith two pillion riders and therefore, he could not balance the vehicle motorcycle and as such, dashed against the vehicle truck. However, the Tribunal has not considered the negligence or contributory negligence on the part of deceased Uttam. The learned counsel submits that in both the claim petitions, the Claimants have not adduced any satisfactory evidence about the income of deceased Uttam and deceased Raosaheb respectively. It has been contended that deceased Uttam was earning from agricultural source and milk business. He was also driving heavy goods vehicle. However, except the 7/12 extract, no documentary

evidence is placed on record to substantiate the said contentions about the income of deceased Uttam from milk business as well as driving the heavy goods vehicle. The learned counsel submits that only on the basis of the driving licence to drive the heavy goods vehicle, no inference could be drawn about the income of deceased Uttam from that source. The learned counsel submits that though the corpus of the land remained as it is and only loss in the agricultural income on account of lack of supervision by experienced and skilled person can be considered, however, the Tribunal has considered the income of deceased Uttam at Rs.6,000/- per month instead of Rs.4,500/- per month. It has been contended that deceased Raosaheb was running grocery and cutlery store and also a chilly crusher in the village and was earning Rs.20,000/- per month. The Tribunal though observed that there is no documentary evidence in this regard, considered the income of deceased Raosaheb at Rs.5,000/- per month. The learned counsel submits that at the most the income of deceased Raosaheb could have been considered equivalent to the wages of a skilled worker and in any way, the same cannot exceed to Rs.4,500/- per month. The learned counsel submits that a copy of the driving licence of Respondent No.2 was also placed on record and it appears that the period of said driving licence came to

an end on 20th March, 2011 and the accident had taken place on 22nd April, 2012. It further appears from the endorsement on the said driving licence that Respondent No.2 / driver got it renewed on 25th April, 2012 i.e. after the date of accident. It is thus, clear that at the time of accident, Respondent No.2 was not holding valid and effective driving licence and as such, there has been a breach of the conditions of the insurance policy. The learned counsel submits that the Tribunal ought to have fastened the liability on Respondent / owner to pay the compensation, instead the Tribunal has directed the Appellant / Insurer to pay the compensation amount to the Claimants and recover the same from the Respondent / owner. The learned counsel submits that the in claim petition in respect of deceased Raosaheb is concerned, even though his age is shown more than 65 years in the inquest Panchanama, the Tribunal has erroneously considered his age by referring the postmortem report and incorrectly applied the multiplier 11 instead of 9.

6 The learned counsel for Respondents / original Claimants submits that on careful perusal of the contents of spot Panchanama and the map drawn on it, it is clear that the accident had not taken place at the middle portion of the road and after referring the contents

of the spot Panchanama and the map drawn on it, the Tribunal has rightly observed in the judgment that the motorcycle was proceeding in right direction whereas the offending vehicle truck went in wrong direction and gave dash to the motorcycle. Furthermore, the Appellant / Insurer has not raised a specific plea that there was a head on collision between two vehicles and as such, the rider of the motorcycle was equally responsible for the accident. The learned counsel submits that in both the claim petitions, the Tribunal has considered the notional income of deceased persons and accordingly awarded just and reasonable compensation. The learned counsel submits that so far as riding the motorcycle triple seat is not sufficient to hold that the rider of motorcycle had driven the said motorcycle in a rash and negligent manner. There is an evidence in the form of spot Panchanama that on a bridge, the offending truck went in a wrong direction and gave a dash to the coming motorcycle. The Tribunal has therefore, rightly placed its reliance on the following two cases:

- a) **Kumari Kiram Thr. Her father Harinarayan Vs. Sajjan Singh and others**, reported in, **2014 AC 642**,
- b) **Ahmedabad Municipal Corporation Vs. Narendrabhai Lalbhai Shah and others**, reported in,

2010 ACJ 15.

7 The learned counsel for Respondents / Claimants submits that deceased Uttam and deceased Raosaheb are the third parties and their legal representatives / Claimants are no way concern with breach of the conditions of the policy on the part of the Respondent / owner. The learned Member of the Tribunal has therefore, rightly directed the Appellant / Insurer to pay the compensation and recover the same from the Respondent / owner. The learned counsel submits that it is not a case of no driving licence at all, but the term of the licence was expired prior to the accident and it is a part of record that the driving licence was also renewed after happening of the accident. The learned counsel submits that though the Claimants have not preferred any appeal against the judgment and award passed by the Tribunal, it appears that the Tribunal has incorrectly awarded the interest at the rate of 6% instead of 9%.

8 On careful perusal of the spot Panchanama and the map drawn on it, it appears that the accident had taken place on a bridge and the tar road on the bridge is 6.4 meters in width having two separate strips on either side of the road. It has been specifically mentioned in the contents of spot Panchanama that blood spots are

appearing at the beginning of the said bridge and also towards left side, right side and middle portion of the tar road. On perusal of the map drawn on the spot Panchanama, it appears that the accident had taken place towards the left correct side of the road. The motorcycle was proceeding towards eastern side of the road and the spot of the accident is shown towards the north side i.e. left side of the road. Thus, I do not find any fault in the finding recorded by the Tribunal that the motorcycle was proceeding on the right direction where the offending vehicle came to the wrong side and gave a dash to the motorcycle.

9 So far as income of deceased Uttam from agricultural source is concerned, the 7/12 extract of the agricultural land owned and possessed by him is produced on record. However, after his death, the corpus of the land remained as it is and it is also a part of record that even after the death of deceased Uttam, the land remained under cultivation. The Tribunal should have considered the loss in the agricultural income on account of lack of supervision on the part of skilled and experienced person like deceased Uttam. However, on the basis of driving licence of heavy goods vehicle of deceased Uttam, which is produced on record, the Tribunal has considered the income

of deceased Uttam from both sources at Rs.6,000/- per month. In view of the same, it would be just and appropriate if the income of deceased Uttam is considered at Rs.4,500/- per month as a loss in the agricultural due to lack of supervision of skilled and experienced person like deceased Uttam. In absence of any income from heavy goods vehicle, no income on this basis can be assumed. Thus, the compensation as awarded by the Tribunal under the head of loss of future income requires re-determination.

10 So far as the income of deceased Raosaheb is concerned, though the Tribunal in para 20 of the judgment has observed that there is absolutely no documentary evidence to prove that deceased Raosaheb was running grocery and cutlery shop and also a chilly crusher in the village, considered his income at Rs.5,000/- per month. Even though the Tribunal has considered his income as equivalent to a skilled worker, instead of considering his income at Rs.4,500/- per month, considered the same on higher side. The same is required to be considered at Rs.4,500/- per month and not more than that. In a claim arises out of accidental death of deceased Uttam is concerned, the Tribunal has correctly applied the multiplier. However, in a claim arises out of the death of deceased Raosaheb is concerned, it appears

that in the inquest Panchanama, the age of deceased Raosaheb is shown as 65 years. However, in the postmortem notes, his age was shown as 55 years. Considering the age of Respondents / Claimants, it appears that the age of deceased Raosaheb was wrongly shown as 65 years of age in the inquest Panchanama. The Tribunal has therefore, considered the age of deceased Raosaheb as 55 years and applied the relevant multiplier 11. I do not find any fault in it.

11 So far as the defence about the breach of the conditions of the policy on the ground that Respondent No.2 / driver was not holding valid and effective driving licence is concerned, it is a part of record that at the time of accident Respondent No.2 / driver was not holding valid and effective driving licence. However, deceased Uttam and deceased Raosaheb are third parties and they are hardly concern with the breach of the conditions of policy on the part of the Respondent / owner. Furthermore, it is not a case of no driving licence at all. Respondent No.2 / driver was holding valid and effective the driving licence prior to the accident. However, on the date of accident, the term was expired. It is also a part of record that the said driving licence was renewed on 25th April, 2012 i.e. after the date of accident. I do not find any fault in the directions given by the Tribunal to the

Appellant / Insurer to pay the compensation first and recover the same from the Respondent / owner.

12 So far as riding of the motorcycle triple seat is concerned, on the basis of it alone, no inference could be drawn about the negligence on the part of the rider of the motorcycle. Furthermore, the Appellant / Insurer has also not examined the driver of the truck to substantiate its contentions that deceased Uttam lost the balance of the motorcycle on account of riding of the motorcycle triple seat. However, riding of the motorcycle triple seat when sitting capacity of the motorcycle is two, amounting to riding of the motorcycle in a public place in breach of the Motor Vehicle Rules. Thus, the compensation awarded by the Tribunal is liable to be reduced to some extent on that count. It would be just and appropriate in a claim petition preferred by the Claimants in respect of the accidental death of deceased Uttam is concerned, the amount of compensation is reduced to the extent of Rs.10,000/-.

13 So far as the compensation awarded by the Tribunal under the other heads are concerned, the learned counsel for Appellant / Insurer has not raised any objection for the same. It also appears that the Tribunal has awarded just and reasonable

compensation under the other heads including non-pecuniary heads.

14 So far as the rate of interest is concerned, though appeal is not preferred by the Claimants, the Claimants are entitled interest at the rate of 9% per annum instead of 6% as awarded by the Tribunal. Thus, in view of the discussions above and so far as the rate of interest is concerned, the impugned judgment and award requires modification.

15 In MACP No.284 of 2014 (Hirabai Raosaheb Sonkambale and others Vs. Sushilabai Karbhasri Tiware and others), the break up of compensation under the various heads, which can be broadly categorized is as under:

Sr. No	Particulars of the head	Amount in Rupees
1)	Towards loss of dependency / future income (as against Rs.4,40,000/- awarded by the Tribunal)	Rs.3,96,000/-
2)	Towards loss of consortium to Petitioner No.1 (as awarded by the Tribunal)	Rs.1,00,000/-
3)	Towards loss of love and affection to Petitioner Nos.2 & 3 @ Rs.25,000/- each (as awarded by the Tribunal)	Rs.50,000/-
4)	Towards funeral expenses (as awarded by the Tribunal)	Rs.25,000/-
	Total =	Rs.5,71,000/-

16 In MACP No.285 of 2014 (Sangita Uttam Dorge and others Vs. Sushilabai Karbhari Taware and others), the break up of compensation under the various heads, which can be broadly categorized is as under:

Sr. No	Particulars of the head	Amount in Rupees
1)	Towards loss of dependency / future income (as against Rs.5,94,000/- awarded by the Tribunal)	Rs.4,45,500/-
2)	Towards loss of consortium to Petitioner No.1 (as awarded by the Tribunal)	Rs.1,00,000/-
3)	Towards loss of love and affection to Petitioner Nos.2 to 6 @ Rs.25,000/- each (as awarded by the Tribunal)	Rs.1,25,000/-
4)	Towards funeral expenses (as awarded by the Tribunal)	Rs.25,000/-
	Total =	Rs.6,95,500/-

17 An amount of Rs.10,000/- is liable to be deducted for riding the motorcycle triple seat and as such, the Claimants are entitled for the total compensation of Rs.6,85,500/- with interest at the rate of Rs.9% per annum from the date of claim petition till realization of the entire amount. Hence, the following order:

ORDER

- I. Both the appeals, are hereby partly allowed. No costs.

- II. In MACP No.284 of 2014 (Hirabai Raosaheb Sonkambale and others Vs. Sushilabai Karbhasri Tiware and others), judgment and award passed by learned Member of the Motor Accident Claims Tribunal, Newasa dated 18th March, 2016 in MACP No.284 of 2014, is hereby modified in the following manner:

“Opponent Nos.1 to 3 do pay, jointly and severally, compensation of Rs.5,71,000/- (Rupees Five Lacs and Seventy-One Thousand Only) (inclusive of the amount paid under Section 140 of the Motor Vehicles Act) to the Petitioners, with interest at the rate of 9% per annum from the date of institution of this application i.e. from 22nd June, 2012 till realization of the entire amount of compensation.”

- III. In MACP No.285 of 2014 (Sangita Uttam Dorge and others Vs. Sushilabai Karbhari Taware and others), judgment and award passed by learned Member of

the Motor Accident Claims Tribunal, Newasa dated 18th March, 2016 in MACP No.285 of 2014, is hereby modified in the following manner:

“Opponent Nos.1 to 3 do pay, jointly and severally, compensation of Rs.6,85,500/- (Rupees Six Lacs Eighty-Five Thousand and Five-Hundred Only) (inclusive of the amount paid under Section 140 of the Motor Vehicles Act) to the Petitioners, with interest at the rate of 9% per annum from the date of institution of this application i.e. from 27th June, 2012 till realization of the entire amount of compensation.”

- IV. Rest of the judgment and award passed in both the claim petitions stands confirmed.
- V. Award be drawn up in both the claim petitions as per the above modifications.
- VI. If any amount is deposited as per the judgment and award passed by the Tribunal, the same shall be the part of the award after modification and the

Claimants are permitted to withdraw the same as per the modified award and the Appellant / Insurer is entitled for the refund of the amount as per the modified award.

VII. Both the appeals are accordingly disposed of.

VIII. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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