

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

FIRST APPEAL NO. 248 OF 2014

THE ORIENTAL INSURANCE CO. LTD.
VERSUS
NANDA RAMESH KANKUTE AND OTHERS

WITH

FIRST APPEAL NO.:254 OF 2014

THE ORIENTAL INSURANCE CO. LTD.
VERSUS
KAMAL SUBHASH AMBHORE AND OTHERS

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Advocate for Appellant : Mr. Dhananjay P. Deshpande.
Advocate for Respondent Nos.1 to 4 : Mr. R. V. Gore.

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CORAM : **V. K. JADHAV, J.**
DATE : 02nd February, 2017.

ORDER:

. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Jalna dated 4th June, 2013 in MACP No.81 of 2012 and the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Jalna dated 4th June, 2013 in MACP No.82 of 2012, the original Respondent / Insurer has preferred these two separate appeals.

2 Both the claim petitions as well as these two appeals arise out of the same accident and thus taken up together for disposal.

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

- a) Deceased Ramesh and Subhash were working as meson with a contractor. On 19th February, 2012, they were proceeding towards work site on motorcycle by Mantha – Jintur road. On way, at about 09:00 am, one jeep bearing registration No.MH-20-U-2166 owned by Respondent No.2 came from the opposite side in speed. Respondent / driver drove the said jeep in rash and negligent manner and initially given a dash to one Maruti car and thereafter, to the said motorcycle. In consequence of which Ramesh and Subhash both died on the spot.
- b) The legal representatives of Ramesh preferred MACP No.81 of 2012 for grant of compensation under the various heads; whereas the legal representatives of deceased Subhash preferred MACP No.82 of 2012 for grant of compensation under the various heads. According to the Claimants, both of them were earning Rs.300/- per day by working as meson and the

Claimants were entirely depending upon their earnings.

- c) Respondent Nos.1 and 2 have strongly resisted the claim petitions by filing the written statement and denied the allegations about the rash and negligent driving on the part of the Respondent / driver of the jeep. It has contended that the rider of the motorcycle was rash and negligent in riding the motorcycle and therefore, the accident had occurred.
- d) The Appellant / Insurer has also resisted the claim petition by filing the written statement. It has contended that the Respondent / driver was not holding the valid licence and therefore, the Appellant / Insurer is not liable to pay the compensation.
- e) The learned Chairman of the Motor Accident Claims Tribunal, Jalna vide its impugned judgment and award allowed MACP No.81 of 2012 and directed the Respondents therein jointly and severally to pay the Claimants Rs.10,53,000/- as a compensation inclusive of NFL amount with interest @ 7.5% per annum from

the date of application till realization of the amount.

The Tribunal has also allowed MACP No.82 of 2012 and directed the Respondents therein to pay jointly and severally an amount of Rs.11,44,600/- a compensation inclusive of NFL amount alongwith interest @ 7.5% per annum from the date of claim petition till realization of the amount.

- f) Being aggrieved by the same, the Appellant / Insurer has preferred these two separate appeals only to the extent of quantum.

4 The learned counsel for Appellant / Insurer submits that both the deceased persons were working as meson and there is no pleading about their future prospects nor the evidence led by the Respondents / Claimants to the effect that both the deceased persons had a bright future prospects. Even then the learned Chairman of the Tribunal has considered the future prospects in both the claim petitions and added 30% in the income of those deceased persons towards future prospects. The learned counsel for Appellant / Insurer has not raised any other point.

5 The learned counsel for Respondents / Claimants submits that both the deceased persons met with an accidental death at the age of 35 years. Thus, considering their age, the Tribunal has made the addition in the income towards future prospects. The learned counsel for the Respondents / Claimants in the alternate submits that if the counsel appearing for the Appellant / Insurer has restricted his submissions to the extent of addition of income of 30% towards future prospects, then under instructions, the learned counsel submits that the Respondents / Claimants are ready to give up the said addition in income and the compensation worked out by the Tribunal on consideration of the same.

6 On careful perusal of the pleadings, the evidence and the impugned judgments and awards passed by the Tribunal, it appears that there is no pleading of the Respondents / Claimants about the future prospects nor any evidence led to that effect. It appears that the learned Chairman of the Tribunal has considered the future prospects only after considering the age of the deceased. There is nothing on record to show that both the deceased persons are the educated qualified persons and they had a bright future though they were doing meson work with one contractor. Since the learned counsel for

Respondents / Claimants, on instructions, ready to give up the said claim, there need no further discussion on this point. Thus, after reducing the compensation to the extent awarded by the Tribunal considering the future prospects, the Respondents / Claimants are entitled to the total compensation of Rs.8,29,235/- in MACP No.81 of 2012 and Rs.9,10,000/- in MACP No.82 of 2012. Hence, I proceed to pass the following order:

ORDER

- I. First Appeal No.248 of 2014, is hereby partly allowed. In the circumstances, there shall be no order as to the costs.
- II. The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Jalna dated 4th June, 2013 in MACP No.81 of 2012 (Nanda w/o Ramesh Kankute and others Vs. Ashok Shankarrao Shinde and others), is hereby modified in the following manner:

“Respondent Nos.1 to 3 shall jointly and severally pay to the Claimants Rs.8,29,235/- (Rupees Eight Lacs Twenty-Nine Thousand Two-Hundred and Thirty-Five only) inclusive

of NFL compensation awarded u/s 140 of the Motor Vehicles Act with interest at the rate of Rs.7.5% per annum from the date of application i.e. from 10.5.2012 till realization of the amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. First Appeal No.254 of 2014, is hereby partly allowed. In the circumstances, there shall be no order as to the costs.
- VI. The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Jalna dated 4th June, 2013 in MACP No.82 of 2012 (Kamal Subhash Ambhore and others Vs. Ashok Shankarrao Shinde and others), is hereby modified in the following manner:

“Respondent Nos.1 to 3 shall jointly and severally pay to the Claimants Rs.9,10,000/- (Rupees Nine Lacs and Ten-Thousand only) inclusive of NFL compensation awarded u/s 140 of the Motor Vehicles Act with interest at the rate of Rs.7.5% per annum from the date of application i.e. from

10.5.2012 till realization of the amount.”

VII. Rest of the judgment and award stands confirmed.

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

IX. The Respondents / Claimants are permitted to withdraw the amount deposited before this Court as per the modified award and the excess amount, if any, shall be refunded to the Appellant / Insurer in both the appeals.

X. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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