Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 739 OF 2014

The New India Assurance Co. Ltd. ... Appellant
Vs.
Atul Rajaram Hembade & Anr. ... Respondents

WITH
CIVIL APPLICATION No. 4014 OF 2014
IN
FIRST APPEAL NO. 739 OF 2014

Atul Rajaram Hembade … Applicant
in the matter between
The New India Assurance Co. Ltd. ... Appellant
Vs.
Atul Rajaram Hembade & Anr. ... Respondents

Mr. S.S. Jinsiwale, Advocate for the appellant.
Mr. D.D. Shinde, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **26th September, 2017.**

P.C.:

Admit. By consent, the First Appeal is heard finally and decided at the stage of admission.

2. This Appeal is filed by the insurance company against the judgment and award dated 24th October, 2013 passed by the learned Additional Member, Motor Accident Claims Tribunal, Pune in M.A.C.P. No. 692 of 2005. The main contesting party is injured

claimant who met with an accident on 25th August, 2004 at 10.30 a.m. when he was riding a bicycle. A maruti car bearing no. MH12-AN-1431 came in a rash and negligent manner and dashed from rear side of the bicycle. The original claimant sustained severe injuries to his head, legs and other parts of the body. He was hospitalized and had to take treatment for months together. He has suffered 60% of permanent disability due to head injury and getting convulsions. It is difficult for him to follow his daily pursuits. He, therefore, filed a claim petition for compensation of an amount of Rs.35 lakhs. In the said claim petition, the insurance company appeared and resisted the claim. The learned Tribunal, after considering the oral and documentary evidence, has allowed the claim and granted compensation of Rs.33,75,000/- along with interest of 7% p.a. Being aggrieved by the judgment and award, the insurance company has filed this Appeal.

3. The learned counsel for the appellant/insurance company has submitted that the respondent no. 1/original claimant was 18 years old and studying in 8th Standard when the accident took place. He submitted that the learned Tribunal has erred in fixing the notional income of Rs.1,00,000/- p.a. of the claimant when he was not

earning at the time of the incident. The learned counsel further argued that at the age of 18 years, respondent no.1/claimant was in 8th Standard, this shows that he was not good in studies. He submitted that in the case of **New India Assurance Co. Ltd. vs. Shweta Dilip Mehta & Ors, 2011 ACJ 489 ,** the girl was 11 years old at the time of accident and thereafter she persuaded her studies upto M.Com. when the matter came up for hearing. Therefore, in that case, an amount of Rs.1,00,000/- p.a. was considered as notional income of Shweta. The learned counsel submitted that in the present case, the claimant was not bright and he did not continue his further studies. He further submitted that the amount of compensation granted by the learned Member, Motor Accident Claims Tribunal is on the higher side and it needs to be reduced.

4. Per contra, the learned counsel for the respondent no. 1/original claimant has submitted that under other heads of future prospects and diet, no amount is granted by the Tribunal. He argued that the amount of notional income of Rs.1,00,000/- p.a. is correct. He further submitted that the respondent no.1/original claimant has suffered many injuries for no fault of his. The claimant was admitted in the hospital for more than four months for taking treatment and on-

going operation. In support of granting future prospects and fixing the notional income of Rs.1,00,000/- p.a., he relied on the judgment of Hon'ble Supreme Court in the case of **V. Mekala vs. M. Malathi & Anr., reported in (2014) 11 SCC 178**.

5. The learned counsel for the appellant/insurance company while meeting the submissions of the learned counsel for the respondent no.1/ original claimant has submitted that the judgment of **V. Mekala** *(supra)* is not applicable to the present set of facts, as the victim in the case of **V. Mekala** was a very brilliant student who was holding 1st rank in the school. So, considering her past record, the notional income of Rs.1,00,000/- p.a. was correctly fixed by the High Court.

6. Heard the submissions. The amount given under the head of medical treatment, travel expenses etc. are found correct. The only challenge which is given on the point of income needs to be considered. It is true that the respondent no. 1 was studying in 8th Standard at the time of accident and at the relevant time, he was 18 years old. It appears that the respondent no. 1 was not good in studies at that time. Therefore, as rightly submitted by the learned counsel for the appellant/insurance company, the trial Judge ought

not to have fixed the notional income of Rs.1,00,000/- p.a. by applying the ratio in the case of **New India Assurance Co. Ltd. vs. Shweta Dilip Mehta** *(supra)*. However, it should have been lesser, i.e., approximately may be 7,000/- p.m., then the monthly income comes to Rs.84,000/- but it will not be Rs.1,00,000/-. However, the submissions of learned counsel for the respondent that it was necessary for the Tribunal to consider future prospects also.

7. In the case of **V. Mekala** *(supra),* the Hon'ble Supreme Court has held that the High Court has committed error in not granting future prospects.

8. In the case of salaried person, 50% future prospects can be granted, however, the original claimant was 18 years old and not employed at the relevant time, therefore, even if 25 to 30% future prospects amount is granted, the amount of total compensation on the point of income may arrive at around Rs.18 lakhs, as considered by the Tribunal. Under such circumstances, I am of the view that in the judgment and award passed by the Tribunal granting compensation of Rs.33,75,000/- along with interest, no interference is required. Hence, the judgment dated 24th October, 2013 passed

by the Member, MACT, Pune is maintained.

9. First Appeal is dismissed.

10. In view of dismissal of First Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)