

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1229 OF 2016

The New India Assurance Co. Ltd. ... Appellant
Versus
Shri Rajesh Murari Jadhav And Others ... Respondents

**WITH
CIVIL APPLICATION NO.1176 OF 2017**

Rajesh M. Jadhav ... Applicant

In the matter of :

The New India Assurance Co. Ltd. ... Appellant
Versus
Rajesh Murari Jadhav And Others ... Respondents

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Mr. D.R. Mahadik for the Appellant.
Mr. S.C. Mangle for Respondent No.1 and Applicant in Civil Application
No.1176 of 2017.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 The First Appeal is admitted. By consent of learned Counsel for both parties, the First Appeal is taken up for hearing forthwith.

3 The impugned order and award of Motor Accident Claims Tribunal, Ratnagiri, grants compensation of Rs.1,90,000/- to the Applicant, who was

an accident victim alongwith interest @ 7 % per annum from the date of the claim petition till realization. Practically, the only ground of challenge is that the application, which was filed under Section 163-A of Motor Vehicles Act, 1988 (the "Act"), was not maintainable, since the Applicant was having yearly income of Rs.40,000/- per annum. Most of the other grounds reflect on this plea. It is, however, apparent from the impugned award of MACT, that the application was treated as an application under Section 166(1)(a) of the Act. If this application is under Section 166(1)(a) of the Act, there cannot be any objection to the various heads of compensation considered by the Trial Court. The issue as to the original Applicant sustaining permanent disability in motor accident which involved an autorickshaw insured with the Appellant (Opponent No.3 to the claim petition), has been decided in favour of the Applicant victim. There is no breach of insurance policy on the part of Opponent Nos.1 and 2, who are, respectively, the autorickshaw driver and owner. The compensation awarded by MACT, Ratnagiri, is just and fair. Compensation for loss of earning is awarded only for a period of three months. The rest of the compensation is under different heads, such as pain and suffering, medical expenses and special diet, which were according to the bills and vouchers submitted before the Trial Court and towards the actual amount incurred during the period of hospitalization. No infirmity can be found in respect of these heads of compensation. There is, accordingly, no merit in the present First Appeal. The First Appeal is dismissed. No order as to costs.

4 In view of the dismissal of the First Appeal, Civil Application No.1176 of 2017 does not survive and the same is also disposed of.

5 The original Applicant shall be entitled to withdraw the entire amount of compensation deposited by the Appellant insurer before MACT, Ratnagiri.

(S.C. GUPTE, J.)