

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.122 OF 2017

United India Insurance Company Ltd.,
Through its Divisional Manager and authorized
representative & signatory, Shrirampur
Divisional office, Hotel Karam Building,
Opposite S.T. Stand, At & Post & Tq. Shrirampur,
Dist. Ahmednagar.

... **Appellant.**

... **Versus** ...

- 1 Mrs. Vaishali Dipak Warade,
Age 43 yrs., Occ. Business
R/o Revenue Colony, Ward No.1,
At & Post Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.
- 2 Dadasaheb Bajrang Aher,
Age : major, Occ. Business,
R/o Nirmal Pimpri, Tq. Rahata,
Dist. Ahmednagar.

... **Respondents.**

...

Mr. A.B. Gatne, Advocate for the appellant
Mr. V.Y. Bhide, Advocate for the respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 03rd JULY, 2019

PRONOUNCED ON : 15th JULY, 2019

JUDGMENT :

1 Present appeal has been filed by the insurance company challenging the Judgment and Award in Motor Accident Claim Petition No.139 of 2014 by Member, Motor Accident Claims Tribunal, Shrirampur, Dist. Ahmednagar dated 03.05.2016 to the extent of quantum.

2 Present respondent No.1 is the original claimant who had filed the said petition for getting compensation under Section 166 of Motor Vehicles Act, 1988. Claimant had contended that she was 42 years old agriculturist and businesswoman running seed business and earning around Rs.15,000/- to Rs.20,000/- per month. She was a pillion rider of her husband's motorcycle on 05.07.2014 when the accident took place. Truck bearing No.MH 19/J-0262 had given dash to her husband's motorcycle, after coming from opposite direction, in rash and negligent manner. After she had fallen down the front tyre of the truck ran over her both legs and both of her legs came to be amputated from thigh as well as knee respectively. She had spent huge amount on her hospitalization. Respondent No.1 is the owner of the offending vehicle and the said vehicle was insured with respondent No.2 at the relevant time. Claimant had claimed compensation worth Rs.1,00,00,000/-.

3 Respondent No.1 though appeared did not file written

statement. Respondent No.2-insurance company denied all the averments in the petition and also took statutory defence contending that there is breach of terms of policy.

4 The claimant alone had led evidence after the issues were framed and taking into consideration the said evidence the learned Tribunal had come to the conclusion, that she has proved that she sustained permanent physical disability in the accident, which was caused due to the rashness and negligence on the part of truck driver. It was also held that the respondent No.2-insurance company has failed to prove breach of terms of policy. Under such circumstance, respondent Nos.1 and 2 were both held liable to pay compensation. Compensation of Rs.33,67,340/- was awarded inclusive of amount under No Fault Liability. This award is challenged by the insurance company on the ground that the amount that has been awarded is without any base and not in consonance with the evidence that has been adduced by the claimant.

5 Heard learned Advocate Mr. A.B. Gatne for appellant and learned Advocate Mr. V.Y. Bhide for respondent No.1-claimant. Taking into consideration the fact that the appeal is restricted to quantum, following point arise for determination. Findings and reasons for the

same are as follows.

“Whether the Tribunal was justified in awarding compensation of Rs.33,67,340/- to the claimant ?

6 The learned Advocate appearing for the appellant has vehemently submitted that though the claimant had come with a case that she is an agriculturist and running seed business, earning Rs.15,000/- to Rs.20,000/- per month, yet, it has come on record that the seed business is going on and the affairs of agricultural land are looked after by her husband. In fact, in her petition she had contended that she was doing tailoring business, but then went on to say that the source of income for her is agriculture and seed business i.e. shop. The learned Tribunal had come to the conclusion that the contention of the claimant, that she is doing tailoring business, does not inspire confidence, taking into consideration that she went on to adduce evidence for seed business. Claimant had examined her husband PW 4 Dipak. In his cross-examination he has stated that he cultivates the land personally. Therefore, the Tribunal did not consider the income from agriculture, so also did not consider the income from seed business as it is still running. The notional income as housewife has been taken @ Rs.300/- per day i.e. Rs.9,000/- per month. This is very much on the higher side. Further, it has been submitted that attendance charges have been wrongly granted

@ Rs.200/- per day i.e. Rs.6,000/- per month. It was fairly submitted by the learned Advocate for the appellant that he is not disputing the amount granted towards loss of amenities, pains and sufferings, medical bills, special diet and transportation. However, it was submitted that the amount, that has been granted towards loss of income, is very much on the higher side. According to him, taking into consideration the catena of Judgments of Hon'ble Supreme Court the notional income ought to have been taken @ Rs.3,000/- per month. According to him, the multiplier of '14' that has been used in this case is also wrong and it ought to have been as per the II Schedule of Section 163-A of the Motor Vehicles Act.

7 Per contra, the learned Advocate appearing for the respondent No.1-original claimant supported the reasons given by learned Tribunal.

8 At the outset, it can be said, that since the claimant has not filed any cross objection or cross appeal challenging the findings by the learned Tribunal, that she has failed to prove the source of income as agriculture and seed business giving her income around Rs.15,000/- to Rs.20,000/- per month, we need not in fact assess the evidence on that point. However, for the sake of clarification or for reiteration it can be seen that initially the claimant had contended that she is doing tailoring

business, but then she amended the petition and claimed that she is doing agriculture and running seed shop, thereby earning Rs.15,000/- to Rs.20,000/- per month. As regards agricultural lands were concerned, the record stood in the name of her husband. PW 4 Dipak admitted in his cross-examination that he is cultivating the land personally. That means, there was no substance in the contention of the claimant that she is getting any amount as income from agriculture. As regards the seed business is concerned, though the licence appears to be in her name, she has clearly admitted that the said business is still going on. She has not led any evidence to show as to who is conducting the said business after her accident. She has not led any evidence to show, that the income from the said business prior to her accident was more and after accident since she is required to conduct through somebody else the business has reduced. In order to support her contention regarding income from business, she has not produced the account extract. The licence which have been produced were for the period 02.06.2010 to 01.06.2012, then 28.04.2010 to 27.04.2013. Though the accident had taken place on 05.07.2014, she had not filed the latest renewal of licence but then in clear terms she has admitted in her cross-examination that the said shop is still running. Another fact to be noted is that PW 4 Dipak-husband of the claimant was totally silent on the point of income of his wife. It

appears that he was examined only to prove the fact of negligence on the part of truck driver. One more opportunity was available for claimant to bring it on record, that she has lost one of the source of income. Further, in her cross-examination claimant has clearly admitted that after accident she has not cancelled the licence to run Krishi Seva Kendra. But then she has also stated that she has not paid income tax. She has no documentary evidence to prove that she used to get Rs.15,000/- to Rs.20,000/- per month. Under such circumstance, the learned Tribunal was justified in arriving at a conclusion that notional income theory is required to be invoked.

9 While invoking the Notional Income Theory, it appears that the learned Tribunal held her income @ Rs.3,000/- per day i.e. Rs.9,000/- per month. When she has failed to prove the source of income she will have to be considered as housewife and under such circumstance, the notional income of housewife is required to be taken into consideration in this case. The accident had taken place in 2014 and therefore, notional income of housewife @ Rs.6,000/- per month would be the just income. In fact, the Hon'ble Supreme Court in various cases has held Rs.6,000/- per month as income for skilled labour. Here, taking into consideration the fact that the claimant might be helping her husband in agriculture also apart from doing household work, it would

be just and proper to take her income @ Rs.6,000/- per month. The notional income arrived at by the learned Tribunal @ Rs.9,000/- per month is very much on the higher side.

10 As regards attendance charges @ Rs.200/- per day = Rs.6,000/- per month are justifiable for the reasons that both the legs of claimant were required to be amputated and therefore, definitely she is dependent on somebody for even carrying out her day to day activities. Under such circumstance, she is suffering loss to the tune of Rs.6,000/- per month towards her own notional income and Rs.6,000/- towards attendance. Thus, the total would be Rs.12,000/- per month. Yearly it would be Rs.1,44,000/-. There is no question of making any kind of deductions for personal expenditure or adding anything for future prospect taking into consideration the fact that notional income is derived on the basis of her occupation as housewife.

11 The learned Tribunal was also justified in applying multiplier theory based on the decision in **Sarla Verma**, though the said case is under death claim. In **Anant Siddheshwar Dukre vs. Pratap Zhamnnappa Lamzane and another, 2018(9) SCC 450** the Apex Court upheld the multiplier adopted by this Court, when in fact, the Trial Court in that case had granted lump sum compensation and this Court held

lump sum compensation cannot be awarded and multiplier method must be followed.

12 We cannot adopt the II schedule under Section 163-A of Motor Vehicles Act, 1988 as the present application is under Section 166 of M.V. Act and the fact that taking into consideration her age as 42 years the just multiplier that has been applied is '14'. After applying the multiplier the total loss of future income would come to Rs.20,16,000/- (Rs.1,44,000/- x 14). Further, as regards the other expenses, which have been granted by the learned Tribunal, have not been seriously disputed. They are granted as it is. That means, Rs.3,97,340/- towards medical bills, Rs.3,00,000/- towards loss of amenities, Rs.2,00,000/- towards pains and sufferings, Rs.30,000/- for special diet and Rs.20,000/- for transportation. Thus, the claimant is entitle to get compensation of Rs.28,63,340/-. The conclusion by the Tribunal that she is entitle to get compensation of Rs.33,67,340/- is on the higher side and therefore, deserves to be set aside. The appeal deserves to be partly allowed. The point is answered accordingly. Hence, following order.

ORDER

1 Appeal is hereby partly allowed.

2 The Judgment and Award in M.A.C.P. No.139/2014 passed by Member, Motor Accident Claims Tribunal, Shrirampur, Dist. Ahmednagar dated 03.05.2016 is hereby set aside to the extent of quantum only and it is modified as follows :

“The respondents shall pay Rs.28,63,340/- (Rupees Twenty Eight Thousand Sixty Three Thousand Three Hundred and Forty only) to the claimant (inclusive of No Fault Liability amount).

3 Excess amount, if any, along with accrued interest, be refunded to the appellant.

4 Awarded amount be disbursed to the claimants as per award.

5 Rest of the Award is maintained as it is.

6 No order as to costs.

(Smt. Vibha Kankanwadi, J.)

agd