

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

FIRST APPEAL NO. 922 OF 2007

New India Assurance Co. Ltd.
Through its Divisional Manager,
Br. Nilkamal Shahu, College Road, Pune,
Adalat Road, Aurangabad

... Appellant
(Orig.Resp.No.2)

Versus

1. Rahul Babanrao Paralkar
Age: 23 years,
R/o Kolpewadi, Tq. Kopargaon,
Dist. Ahmednagar

2. Bhanudas Kaluram Tangde
Age: Major, Occ: Business,
R/o. Rajewadi, Tq. Khandala,
Dist. Satara

... Respondents
(Respdt.No.1 – Org.Claimant
and Respdt.No.2 – Org. Respdt No.1)

....

Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. Amol Gandhi, Advocate for respondent No.1
Mr. Ram B. Deshpande, Advocate for respondent No.2

....

CORAM : R. G. AVACHAT, J.

DATED : 18th NOVEMBER, 2021

J U D G M E N T :-

. This is Insurance Company's appeal, taking exception to
the judgment and award dated 01.03.2007, passed by the Member,

Motor Accident Claims Tribunal, Kopargaon, in Motor Accident Claim Petition No.78 of 2004. Vide impugned judgment and award, a sum of Rs. 4,96,000/- has been awarded with 7.5% per annum interest thereon as compensation on account of injuries and disability suffered in vehicular accident. It was the petition filed under Section 163-A of the Motor Vehicles, Act, 1988 (for short 'M.V. Act'). The appeal is restricted to the quantum of compensation amounting to Rs.1,01,000/-, since according to the appellant – Insurance Company, that much amount has been granted in excess of permissible limit under Second Schedule of the M.V. Act.

2. FACTS:-

Respondent No.1 Rahul was on his way back home on 10.11.2003 by 7.00 p.m. He was accompanied by his friend Babasaheb Kolpe. Both of them were proceeding on foot. A tempo bearing registration No.MH-11/A-3299, came from behind. It knocked down Rahul. As a result thereof, Rahul suffered multiple injuries and permanent disability as well. The Doctor assessed the disability at 75%. Rahul, therefore preferred claim petition for compensation.

3. The Tribunal, on appreciation of the evidence in the case, awarded compensation as under:-

Towards pecuniary loss	Rs. 3,75,000=00
Claimant was in hospital for two months	Rs. 4,800=00
Quantum of compensation	Rs. 1,01,000=00
Pains and sufferings	Rs. 15,000=00

Total	Rs. 4,95,800=00
Rounded	Rs. 4,96,000=00

4. According to the learned Advocate for the appellant, in case of petition under Section 163-A of the M.V. Act, compensation is payable as per the structured formula prescribed in Second Schedule of the M.V. Act. The amount of compensation payable on account of medical expenditure, pain and suffering was not to exceed Rs.20,000/- (15000 + 5000). The Tribunal has granted a sum of Rs.1,01,000/- in excess of the permissible limit.

5. Learned Advocate for the appellant – Insurance Company has placed reliance on the following judgments.

- (i) New India Assurance Company Ltd. Vs. Prabhakar Marotrao Ghagare & Ors – 2013 (4) Bom. C.R. 618;
- (ii) New India Assurance Company Ltd. Vs. Kantabai Dattatraya Salve – (First Appeal No.266 of 2017 of Bombay High Court, Aurangabad bench).

He, ultimately urged for setting aside of the impugned award to the extent of Rs.1,01,000/-.

6. Learned Advocate for the respondent – claimant would, on the other hand, submit that petition under Section 163-A of the M.V. Act can be converted into one under Section 166 of the M.V. Act. He, therefore, urged to assume the said petition as one filed under Section 166 of the M.V. Act. According to the learned Advocate, the amount of compensation awarded by the Tribunal is in fact, very much on lower side. He, therefore, urged for dismissal of the appeal.

7. True, it was a claim petition under Section 163-A of the M.V. Act. There is no dispute as to the facts that led to the filing of the claim petition. The claimant was returning his home after attending the duty. He was on his foot. The tempo came from behind and knocked him down. In this factual backdrop, the claim petition ought to have been preferred under Section 166 of the M.V. Act. Be that as it may, the claimant suffered 75% of the disability. The Tribunal, considering his monthly income at Rs.2,400/-, has awarded compensation amounting to Rs.3,75,000/- (Formula:- Percentage of disability is 75%. 75% of the monthly income of the injured comes

to Rs.1,800/-. Thus, the annual income of the injured comes to Rs.21,600/-. The injured was 26 years of age. As per Second Schedule of the M.V. Act, the Tribunal has awarded a sum of Rs.3,75,000/- towards future pecuniary loss).

8. A sum of Rs.15,000/- has been awarded towards pains and sufferings and towards medical expenditure, a sum of Rs.1,01,000/- has been awarded.

9. It is true that as per Second Schedule of the M.V. Act, no more than Rs. 5,000/- can be awarded on account of pain and suffering. A maximum limit for amount of compensation on account of pain and suffering and medical expenditure is Rs. 5,000/- and Rs.15,000/-, respectively.

10. The accident dates back to 2003. The Second Schedule was brought into force in 1994. The value of rupee has necessarily been dwindled since then. The respondent – claimant has incurred the medical expenditure amounting to Rs.1,00,000/-. Although the learned Advocate for the appellant – Insurance Company may be right in submitting that the amount of compensation has in fact been awarded in excess of the prescription under Second Schedule of the

M.V. Act, this Court is not inclined to interfere with the impugned award, in the peculiar facts and circumstances of the case.

11. In the result, the appeal fails. The same is therefore, dismissed.

[R. G. AVACHAT, J.]

SMS