

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

**FIRST APPEAL NO. 2545 OF 2021
WITH
CIVIL APPLICATION NO.3468 OF 2015
AND
CIVIL APPLICATION NO. 7068 OF 2019**

New India Assurance Company Ltd. Branch Office at Shrirampur, Taluka Shrirampur, Dist. Ahmednagar. Through its Authorized Signatory/ Divisional Manager, Adalat Road, Divisional Officer, Aurangabad.	.. Appellant [original Resp.No.2]
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Versus

1) Kashinath s/o. Radhakisan Wagh Age.50 years, Occ.Service, R/o. Rajapur, Taluka Yeola, District Nashik.	.. Respondents [Resp.No.1- Ori.Claimant Resp.No.2- Ori.opponent No.1]
2) Tata Motors Limited Represented by its Authorized Officer, Rang-I, Pimpri, Pune-411 018.	

Mr.S.G.Chapalgaonkar, Advocate for the appellant.
Mr.S.S.Dev & Mr.A.T.Kanawade Advocate for respondent No.1
Respondent No.2 served.

CORAM	:	VINAY JOSHI, J.
RESERVED ON	:	10.02.2022
PRONOUNCED ON	:	21.02.2022

J U D G M E N T :-

01. This is an appeal of the insurance company

challenging the judgment and award dated 26.03.2014 passed by the Motor Accident Claims Tribunal, Kopargaon, in MACP no.4 of 2006. The Tribunal has partially allowed the injury claim, which is impugned in this appeal.

02. The facts of the case in brief are that, the respondent (injured) was driving his Maruti van at relevant time. While he came near the place of occurrence, the offending vehicle, namely, tempo New Chassis Temporary Regi. No.MH-12-0788 came in high speed and gave dash to the Maruti van. As a result and impact of said accident, the claimant sustained bodily injuries of grave nature. On account of said accident, the injured claimant has approached to the Tribunal by resorting the special provision for grant of compensation on structured formula basis in terms of section 163-A of the Motor Vehicles Act.

03. The injured led oral as well as documentary evidence before the Tribunal. The involvement of

offending vehicle new chassis in concerned accident was proved. Since it was a claim under section 163-A of the MV Act, there was no question about deciding the aspect of negligence. The Tribunal held that the injured sustained permanent disability and assessed total compensation of Rs.5,67,480/-.

04. In this appeal the insurer has challenged the impugned judgment and award on two fold grounds. Firstly, it is argued that the income of the injured was above Rs.40,000/- per annum. Therefore, the claim was not maintainable. Secondly, it is argued that despite accidental injuries, the injured has continued his service and therefore there was no loss of earning capacity. With these prime contentions the impugned judgment is called in question.

05. The appellant's learned Counsel in support of his contention about non-maintainability of petition, relied on the decision of the Supreme Court in case of

Deepal Girishbhai Soni and Ors. Vs. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385 and decision of this Court in case of M/s. New India Assurance Co. Ltd. Vs. Smt. Ashabai w/o. Kalyan Kothi & Ors., 2008 (2) TN MAC 253 (Bom.). In above cases, it is clarified that if a person invokes the provisions of section 163-A of the MV Act, the annual income of Rs.40,000/- is treated as a cap.

06. On the other hand, the respondent's learned Counsel has submitted that the decision in the case of Smt. Ashabai (supra) would not apply, since it was a death claim, though filed under section 163-A of the MV Act. He would submit that the observations made by the Supreme Court in Deepal Soni's case (Supra) would not apply to the facts of this case. Moreover, it is contended that since the disability was 45%, the annual income to the extent of 45% is to be reduced on which the annual income would come below Rs.40,000/-.

07. Undisputedly, the injured in his claim petition as well as evidence affidavit has asserted that he was earning Rs.6000/- per month. The grant of compensation under structured formula basis is a social security scheme, available to the distinct class having annual income up to Rs.40,000/-. The second schedule of the MV Act has been introduced in the year 1994. The Hon'ble Supreme Court on several occasion has directed the Central Government to revise the second schedule. Recently, the Supreme Court in case of Kurvan Ansari & Ors. Vs. Shyam Kishore Murmu and Ors., 2022 ACJ 166 has reiterated that in-spite of repeated directions, the second schedule which was prepared long back has not been amended.

08. On the canvass of said position, it requires to be noted that the appellant insurance company has not raised said defence in its written statement Exh.14. I have carefully examined the written statement. However, unable to find slightest reference about the defence of

non-maintainability on account of a cap about annual income. Naturally, since such defence was not taken, the Tribunal has not framed such issue for consideration. Apparently, this defence is taken first time in the appeal and therefore having regard to the object of legislation, it cannot be entertained, as before Tribunal the insurance company has submitted to the maintainability of petition by not taking such specific defence.

09. The injured was serving as a peon with primary health center and was drawing salary to the tune of Rs.6000/- per month. The Tribunal has considered salaried income and by use of multiplier of 15 and by reducing 45% of the amount as per disability, determined the compensation. The appellant's learned Counsel has pointed out that there was no loss of earning capacity at all. For this purpose, he took me through the evidence of injured wherein he admits that still he is in service. He was away from the service for the period of 9 to 10

months only. Pertinent to note that after accident the injured was promoted as a clerk and continued his job. Therefore, it is a case where there is no loss of earning capacity at all.

10. The respondent's learned Counsel by placing reliance on the decision of National Insurance Co. Ltd. Vs. Gurumallamma and Anr. 2009 AIR (SCW) 7434, submitted that in injury claim or non-fatal claim raised under section 163-A of the MV Act, multiplier can be used. There can be no dispute about said proposition, but always it depends upon the facts and circumstances of each case. It is explicit clear that after accident the injured has joined his duty as well as has been promoted and therefore it is not a case where multiplier method can be used. The Tribunal has seriously erred to that effect.

11. The respondent's learned counsel would submit that merely because the injured has continued his

service, that cannot be a reason for non-granting prospective loss of income. In this regard, he relied on the decision of this Court in case of Union of India (UOI) Vs. Oswald Anathony Athayde and Ors., 2004 STPL 13557 Bombay. Said decision is distinguishable on facts. It was a case of injury claim of a young Chartered Accountant aged 28 years. Having regard to his educational qualification, young age and position held in banking sector, Court find it appropriate to make addition on account of prospective loss of earning. Being distinct facts, said ratio would not apply to case at hand.

12. The injured has sustained 45% permanent disablement. Though the insurance company has challenged the disability certificate, however, it is issued by a panel of Doctors including Civil Surgeon. The injured has sustained fracture of left Hemipelvis with overriding of fragments. The injured was admitted to various hospitals and undergone prolonged indoor treatment.

Having regard to the nature of injury and treatment, at the most the injured would have deprived of his job for the period of one year. Therefore, the loss of earning would be Rs.6,000/- x 12 = Rs.72,000/- only for which he is entitled. The Tribunal has awarded Rs.37,000/- towards medical expenses, which cannot be disputed. Besides that the injured is entitled for Rs.45,000/- towards pain and suffering, Rs.20,000/- towards attendant charges, Rs.25,000/- towards conveyance and Rs.10,000/- towards special diet. In view of that the total entitlement would be as below :-

Sr. No.	Particulars	Amount (Rs.)
1	Loss of earning capacity.	72000.00
2	Medical expenses	37000.00
3.	Pain and suffering	45000.00
4.	Attendant charges	20000.00
5.	Conveyance charges	25000.00
6.	Special diet	10000.00
	Total	209000.00

13. Admittedly, the offending vehicle was duly insured with the appellant insurance company at the

relevant time. Since it was a claim under section 163-A of the MV Act, point of negligence is irrelevant. Having regard to above fact, the Tribunal has seriously erred in computing the amount of compensation. In view of that, the appeal deserves to be partly allowed and the compensation is to be reduced to the extent of Rs.2,09,000/- as observed above.

14. In the circumstances, the appeal stands partly allowed. The impugned judgment and award dated 26.03.2014 is hereby modified. The compensation amount is reduced to the extent of Rs.2,09,000/- (Rupees Two Lakhs Nine Thousand Only). Rest of the impugned order is maintained as it is.

15. During pendency of appeal, this Court has granted stay to the execution on deposit of 50% of awarded amount, which has been deposited in this Court. It is informed that the claimant has not withdrawn any amount till date. Taking note of said fact, the claimant

is entitled for proportionate withdrawal as per order of this Court and remaining amount be refunded to the appellant-insurance company.

16. In view of disposal of first appeal, pending civil applications stand disposed of.

[VINAY JOSHI,J.]