

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

FIRST APPEAL NO. 1962 OF 2017

United India Insurance Co. Ltd., .. Appellant
Through its Divisional Manager and [original
authorised representative & signatory, Opp.No.2]
Sangamner Divisional Office,
Hotel Karam Building, Opposite S.T.
Stand, at & Post & Taluka Sangamner-422605
District – Ahmednagar.

Versus

1. Dnyaneshwar Vishwanath Wagh .. Respondents
Age 44 years, Occ. Nil [No.1 ori.
R/o. Dhamori, Tal. Kopergaon, claimant,
Dist. Ahmednagar. No.2 ori.
Opp.No.1]

2. Shri Dattatraya Rambhaji Pawar
Age. Major, Occ. Agri.,
R/o.Kotamgaon, Tal. Niphad,
Dist. Nashik.

Mr.A.B. Gatane, Advocate for the appellant.
Mr.A.S. Gandhi, Advocate for respondent No.1.

CORAM : VINAY JOSHI, J.
RESERVED ON : 19.01.2022
PRONOUNCED ON : 11.02.2022

J U D G M E N T :-

01. This appeal is directed against the judgment and
award dated 22.09.2016 passed in MACP No.3 of 2015 by the

Motor Accident Claims Tribunal, Kopargaon, Dist. Ahmednagar. The Tribunal has assessed total compensation to the tune of Rs.23,96,615/- in injury claim which has been impugned in this appeal by the insurance company.

02. The facts of the case in brief can be stated that respondent No.1 - Dnyaneshwar (injured) was proceeding on 29.09.2014 as a pillion rider on motor cycle along with his brother on Shirdi-Lasalgaon road. While the motorcycle was passing through Morvis Shivar, the offending motorcycle bearing registration No. MH-15-EL-8864 came from opposite direction in high speed. The offending motorcycle came to wrong side and gave heavy dash to the motorcycle on which the injured was pillion rider. As a result and impact of said accident, the injured sustained grave bodily injury to his right foot for which he was hospitalized. Later-on he was shifted to Sancheti Hospital, Pune, where he was indoor patient from 30.09.2014 to 11.10.2014. Ultimately, his right leg above knee was came to be amputated.

03. It was the case of injured that the said accident took place due to sole rash and negligent driving on the part of the driver of the offending motor-cycle. The police have registered offence against rider of said motor-cycle. At the relevant time, the offending motorcycle was insured with the appellant company. The injured stated that he owns agricultural land from where he was taking cash crops. Due to permanent disablement he was unable to look after his agricultural work and thus sustained annual loss to the tune of Rs.1 lakh. Moreover, he has claimed compensation towards medical expenses and under other non-pecuniary heads.

04. The insurance company resisted the petition vide reply affidavit. Besides usual denials, it is contended that there is no material in support of income of the injured. In appeal, the learned Counsel appearing for insurance company would submit that despite evidence the tribunal has wrongly assessed the income of the deceased

on higher side.

05. Initially the appellant has challenged the point of negligence by contending that the brother of the injured who was riding motorcycle was also equally negligent. Perused the evidence led by the injured and police papers. Admittedly, the insurance company has not led evidence on the point of negligence. The case of injured is well supported by police papers. The injured himself has stated about rash and negligent driving of the rider of the offending motorcycle. In absence of any rebutting evidence, it is difficult to accept the stand taken by the insurer that too against the substantive evidence of injured himself. The tribunal has rightly assessed the material on said aspect while concluding that the accident occurred due to sole negligence of the rider of the offending motorcycle which calls no interference.

06. The learned Counsel appearing for the appellant

has strongly criticized the impugned judgment particularly on the point of assessment of compensation amount. He would submit that besides isolated revenue extract, there is no material to hold that the injured was earning Rs.1 lakh per annum. It is argued that the revenue extract discloses that the land was Jirayat having no facility of irrigation. According to him the injured could have produced documents to support his case that he was taking sugarcane and grape crop. According to him in absence of any material, it is difficult to accept the interested version of the injured about his income.

07. The injured before the Tribunal led evidence at Exh.24. It is his case in the petition itself that his annual agricultural income was Rs.1 lakh. In support of said contention the injured has produced revenue extract showing that he owns 2 hectare and 24 R agricultural land. The extract discloses that there was old well in the land and in the year 2014-15 grape crop was taken.

True, the injured could have produced earlier revenue extracts to support his contention. However, the fact remains that he owns sizable agricultural land from where he was taking cash crops. The injured has also produced Khata extract and one another revenue extract showing that crops were taken in the year 2015-16. True, the injured could have produced better evidence but the revenue extracts are sufficient to disclose that he was an agriculturist and taking agricultural income from there.

08. The learned Counsel appearing for the appellant has submitted that admittedly, the agricultural land remains with the family and injured is taking income from there. The injured can very well engage persons to look after agricultural land and therefore it is not a case of 100% loss of income. In support of said contention the appellant relied on the decision of the Supreme Court in the case of State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) 7 SCC 484, wherein it is ruled that

the compensation must be "just and reasonable" i.e. proportionate to "damages" in the real sense. The Supreme Court took a note that even after demise of a person in vehicular accident, the land remains with the family. The tribunal has to weigh various factors while assessing compensation. On the same line, reliance is placed on the reported case of New India Assurance Co. Ltd. Vs. Charlie and Another, 2005 AIR SCW 1801, wherein the Supreme Court observed that normal rule about deprivation of income is directly not applicable in case of loss of agricultural income.

09. Coming to the point of income, the injured has stated that he was earning Rs.1 lakh per annum. It is to be noted that the land exclusively stands in the name of injured from where he was taking crop. Having regard to the nature of cash crops taken by the applicant, the annual income to the tune of Rs. 1 lakh appears to be quite probable and reasonable. In view of the nature of litigation, one cannot expect a strict proof from a

rustic agriculturist. Revenue extract bearing entries of cash crop can be termed as sufficient indicator for assessing agricultural income. Therefore, I have no hesitation in holding that the injured was earning Rs.1 lakh per annum from his agricultural work.

10. On the point of income the appellant's learned Counsel by placing reliance on the decision of Ponnumany alias Krishnan and Anr Vs. V.A. Mohanan and Ors. (2008) 4 SCC 717 would submit that since the agricultural land remains with the injured, it cannot be said that there is total loss of income due to injury suffered by the claimant. True, herein also the land remains with the injured. However, having regard to the nature of disablement and its impact the loss of earning has to be assessed.

11. The claimant's learned Counsel by placing reliance on the decision of this Court in the case of Sarika w/o Vaibhav Wagh Vs. Ramkrushna s/o. Mahadeorao

Mandale, 2021 DGLS (Bom) 1545 would submit that in case of agricultural work, this Court has considered agricultural income to the tune of Rs.10,000/- per month. It is pointed out that in said case the then deceased was holding land admeasuring 1 Hectare 60 R and in such circumstances the Tribunal held notional income to the tune of Rs.10,000/- per month. It reveals that in said case, there was material to indicate that the deceased was cultivating land as well as doing milk business. On the basis of the then given facts, monthly income was assessed. Needless to say that on the basis of facts in hand, one has to assess the annual agricultural income, of course, which is a sort of guess work.

12. The Tribunal has added 30% towards loss of future prospects. The insurer has denied the entitlement of future prospects. However, there is no support to said contention. On the other hand, learned Counsel appearing for the respondent by placing reliance on the decision of the Supreme Court in the cases of Anant

Sidheshwar Dukre Vs. Pratap Zhamnnappa Lamzane and Anr., 2018(9) SCC 450 and Jagdish Vs. Mohan and Ors., 2018(4) SCC 571 contended that in case of injury claim also future prospects can be awarded. No doubt, there would be escalation in the income and therefore there is no difficulty in granting future prospects. At relevant time the injured was 42 years of age. The injured was agriculturist meaning thereby he was self-employed. Therefore, in view of decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Shthi & Ors., (2017) 16 SCC 680, 25% is to be added towards future prospects i.e. Rs.1,00,000/- + Rs.25,000/- = Rs.1,25,000/-.

13. The next crucial step is about loss of dependency. The injured has led evidence of Dr. Deepak Naikwade, who has stated that there was amputation of right leg above knee. It is his evidence that the injured cannot do heavy labour work. The Medical Officer has assessed 84% permanent disablement. In injury claim

assessment of compensation under the head of loss of future earning would depend upon the effect and impact of permanent disability on the earning capacity of the injured. The Hon'ble Supreme Court in reported case of Raj Kumar Vs. Ajay Kumar and Anr., (2011) 1 SCC 343 has ruled that the Tribunal has to assess the effect of the permanent disability on the earning capacity of the injured and after assessing loss of earning capacity, it has to be quantified in terms of money.

14. It is evident that claimant was doing agricultural work. Certainly, considering his avocation, he cannot work as earlier. Amputation of right knee would certainly restrict his movement and he would not be in a position to actively do all agricultural functions. However, the claimant can certainly carry some sort of work as well as definitely would supervise agricultural work. Therefore, it is not the case of 100% loss of earning capacity. The claimant can engage services of others for doing agricultural labour work and thus the

loss of earning capacity would be to the extent of 90%. As such, annual loss of earning would be Rs.1,25,000/- x 90% = Rs.1,12,500/-. Having regard to the age of the injured, multiplier of 14 is to be applied. Thus, it comes to the tune of Rs.1,12,500/- x 14 = Rs.15,75,000/-. So far as other additions made by the Tribunal are concerned, I have no hesitation in accepting the same being reasonable. Thus, the total entitlement would be as below :-

Sr. No.	Particulars	Amount (Rs.)
1	Loss of earning capacity.	1575000.00
2	Medical expenses	241615.00
3.	Pain and suffering	100000.00
4.	Loss of amenities	200000.00
5.	Travelling expenses	25000.00
6.	Special diet	10000.00
	Total	2151615.00

15. In view of above, the impugned judgment calls interference only to the extent of quantum of compensation to above extent. In the circumstances, the appeal stands partly allowed. The claimant is entitled

for total compensation of Rs.21,51,615/- (Rupees Twenty One Lakhs Fifty One Thousand Six Hundred Fifteen Only) along with interest as directed by the Tribunal. Rest of the order would remain as it stands.

16. The appeal disposed of accordingly.

[VINAY JOSHI,J.]