IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1719 OF 2013

United India Insurance Co. Ltd. ... **Appellant**
Through its Divisional Manager and
Authorized Representative & Signatory,
Ahmednagar Divisional Officer, Kisan
Kranti Building, Ahmednagar

VERSUS

Bhagwat Ramkrishna Aglave ... **Respondent**
Age 49 years, Occu: Service,
R/o Savlivihir, Tal. Kopargaon,
District Ahmednagar

Mr. A. B. Gatne, Advocate for the appellant
Mr. N. C. Garud Advocate for respondent No.1.

CORAM : Y. G. KHOBRAGADE, J.
DATE : 17th NOVEMBER, 2022

JUDGMENT:

1. The present appeal under section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 3rd February, 2006 passed by the learned Member, Motor Accident Claims Tribunal, Kopargaon in MACP NO. 299 of 2002, whereby, the learned Tribunal declared that, the respondent No.1-claimant is entitled to receive amount of Rs.2,99,350/- towards compensation on all counts, on account of sustaining 20% permanent disability in an accident occurred on 10.08.1998 near Nandeshwar shivar.

2. The appellant-Insurance Company is original opponent no.2 and present respondent No.1-claimant is original applicant in MACP No. 299 of 2009. However, the respondent No.2-Truck owner is deleted from array of the respondents.

3. In nutshell, facts rise to the present appeal are that, on 10.10.1998, the claimant was travelling in Tanker bearing No. MWA 5901 which was proceeding from Kopergaon to Yeola and when said Tanker reached near Nandeshwar Shivar offending a Truck bearing No. MP 09 KA7201 came from opposite direction in high and excessive speed and gave dash to the Tanker in which the claimant was travelling, due to which, the claimant sustained grievous fracture. After the accident, the claimant was hospitalized at Municipal Hospital, Yeola but due to grievous and multiple fractures, he was shifted to Dr. KakatkarHospital, Nasik, where he was treated as an indoor patient with effect from 10.08.1998 to 09.10.1998.

4. According to the claimant, he incurred medical expenses of Rs.50,000/- for his medical treatment and he was bedridden for six months due to which, he suffered huge monetary loss. The claimant further claimed that, said accident occurred due to rash and negligent driving on part of the driver of offending Truck bearing No. MP 09 KA7201. The original opponent No. 1/respondent No.2 is the owner of said truck which was duly registered with appellant Insurance Company.

According to the claimant, he sustained permanent disability of 20%. Therefore, considering his 20% permanent disability, loss of income, medical expenses, cost of attendance, travelling expenses, he is entitled to Rs.4,57,000/- towards compensation.

5. The offending truck owner/Opponent no.1 was duly served with the notice in claim petition, but remained absent, therefore, matter was proceeded exparte against the Truck owner. The Opponent No.2/ present appellant-Insurance Company resisted the claim petition by filing written statement at Exh.12. According to Opponent No.2/ appellant, the offending truck bearing No. MP 09 KA7201 owned by original opponent No.1 and said truck was insured under Policy No. 575796 for the period 11.11.1997 to 10.11.1998. However, the appellant- Insurance Company denied about occurrence of accident due to rash and negligent driving of the offending truck, hence, prayed for dismissal of the claim petition.

6. On the basis of rival pleadings both sides, the learned Tribunal framed issues at Exh. 21. In order to substantiate the claim, the claimant examined himself at Exh. 36 and proved complaint Exh.40 and spot Panchanama Exh.41. During the course of trial, the claimant proved medical certificate Exh. 42 and permanent disability certificate Exh. 57, medical certificate issued by Dr. Kakatkar at Exh. 38. In order to prove income, the claimant proved salary certificate issued by his

employer at Exh. 37. On conclusion of the trial, the learned Tribunal passed the impugned judgment and award and held that, the claimant is entitled to receive compensation to the tune of Rs.2,99,350/- on all counts and Opponent Nos. 1-truck owner and opponent No. 2-Insurance Company jointly and severally directed to pay the same. Being aggrieved by the said judgment and award, the appellant-Insurance Company filed the present appeal.

7. Mr. A. B. Gatane, the learned counsel appearing for the appellant-Insurance Company vehemently canvassed that, at the time of accident, the injured was 45 years of age, therefore, the learned Tribunal would have applied multiplier of 10 instead of 15 and the Schedule prescribed under section 163-A of the MV Act would have been treated as guidelines, which can be invariably applied being ready reckoner. However, the learned Tribunal failed to apply proper multiplier and awarded exorbitant compensation, therefore, the impugned judgment and award is illegal, bad in law.

8. Learned Advocate appearing for the appellant- Insurance Company further submitted that, though the learned Tribunal followed schedule-II of Section 163-A of the MV Act, however, while considering the claim for compensation under section 166 of the MV Act, age of injured, prevailing rate interest, quantum and nature of income required to be taken into consideration while determining the

compensation, but while passing impugned judgment and award, the learned Tribunal overlooked Schedule-II of section 163-A of the MV Act and awarded exorbitant compensation. The learned counsel for the appellant further canvassed that, at the time of accident, claimant was 45 years of age, therefore, multiplier more than 10 would not have been applied by the learned Tribunal, however, while passing the impugned judgment and award, the learned Tribunal applied multiplier '15' which is contrary to Schedule II of Section 163-A of the MV Act. Therefore the impugned judgment and award is illegal,bad in law and prayed for quash and set aside the same.

9. In support of his submissions, the learned counsel appearing for the appellant placed reliance on the case of **Tamilnadu STC Vs. S. Rajapriya & others, reported in 2005, AIR SCW 2542**, wherein the Hon'ble Supreme Court held that at the time of accident, the deceased was 38 years old, therefore, appropriate multiplier would be 12 and not 16 as adopted by the learned Tribunal and confirmed by the High Court. The learned counsel further relied on the case of **Managing Director, TNSTC Vs. K.I. Bindu & others, 2005 (8) SCC 473,** wherein, it has been held that, Schedule II to the MV Act suffers from many defects and same is served as guide but it can not be said to be invariable ready reckoner.

10. Per contra, the learned counsel appearing for respondent no.1/claimant supported the findings recorded by the learned Tribunal and submitted that, at the time of accident, respondent no.1/ original claimant was 45 years old and he sustained permanent disability to the extent of 20%. So also, the claimant incurred huge expenses towards his medical treatment and the claimant lost his salary for 156 days for which he was hospitalized. Therefore, considering the future loss, medical expenses and permanent disability of 20%, the learned Tribunal awarded compensation of Rs.2,99,350/- including NFL under section 140 of the MV Act. Therefore, the appellant has not made out any substantial ground to interfere with the findings recorded by the learned Tribunal, hence, prayed for dismissal of the appeal.

11. In the present appeal, the appellant Insurance Company only challenged the quantum of compensation mainly on ground that the learned Tribunal applied multiplier "15" instead of "10". However, the appellant-Insurance Company has not disputed that, on 10.08.1998, the respondent No.1 claimant met with accident due to dash given by truck bearing No. MP 09 KA7201 to the Tanker bearing No. MWA 5901 in which the claimant was travelling and he sustained 20% permanent disability. Medical certificate Exh. 42 and disability certificate Exh. 57 as well as Medical Certificate Exh. 38 issued by of Dr. Kakatkar Hospital are in corroboration of the permanent disability to the extent

of 20%. The Medical bills Exh. 14 and Exh. 28 prove that, the claimant incurred expenses to the tune of Rs.53,916/- + Rs.52,700/- = Rs.1,06,616/-. However, the claimant already recovered Rs.39,126/- from his employer. Therefore, the learned Tribunal held that the claimant is entitled for medical expenses to the tune of Rs.67,490/-. Since the claimant sustained permanent disability to the extent of 20% and claimant drawn salary of Rs.5470/- for the month of October, 1998 which rounded to Rs.5500/-per month, 20% of salary comes to Rs.1100. The claimant was 45 years of age, therefore, considering Schedule II of Section 163-A of the MV Act, the learned Tribunal applied multiplier '15' and ascertained compensation towards future loss Rs.1100 X 12 X 15=1,98,000/- plus Rs.5000/- towards pains and suffering plus Rs.28860/- towards loss of salary for 156 days and Rs.67,490/- towards reimbursement of medical expenses, total compensation of Rs. 2,99,350/-. Second schedule to Section 163-A provides multiplier of "15" for above 40 years, but not exceeding age of 45 years and the learned Member applied multiplier of "15", which does not appear higher. Therefore, I do not find that the appellant Insurance Company made out substantial ground to interfere with the findings recorded by the Trial Court, hence, present appeal is liable to be dismissed.

12. Since the Insurance Company deposited statutory amount of Rs.25,000/- while presenting the appeal, the respondent No.1/claimant is entitled to withdraw the same. So also, the appellant Insurance Company deposited the compensation before the Tribunal, therefore, the Respondent No.1 claimant is entitled to receive the said amount along-with interest accrued thereon.

13. In view of the above, I proceed to pass following order:

O R D E R

(1) Appeal is dismissed.

(2) The Respondent No.1-claimant is hereby permitted to withdraw amount of Rs.25,000/- deposited by the appellant- Insurance Company before this Court by way of statutory deposit and the amount which has been deposited before the trial Court along-with accrued interest thereon, if any.

(3) Record and proceedings be remitted back to the Trial Court.

(4) No order as to costs.

(Y. G. KHOBRAGADE, J.)

JPChavan