

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

FIRST APPEAL NO. 1101 OF 2010

M/s New India Assurance Co. Ltd
Versus
Thaknath Parbhatrao Shirsath
and others

.....
Advocate for the appellant : Mr. V. N. Upadhye
Advocate for respondent No.1 : Mr. P. P. Patni
h/f Mr. A.S. Bajaj

....
CORAM : S. G. DIGE, J.
DATE : 12.09.2022

PER COURT :-

The short issue is involved in this appeal regarding income of the injured.

Brief facts of the case are as under :-

2. It is contention of the learned counsel for the appellant that appellant-respondent No.1 (original claimant) filed claim petition under Section 163-A of the Motor Vehicle Act (for short the Motor Vehicle Act) claiming that the income of deceased Thaknath was Rs. 3,000 to 4,000/- per month. If the income of the deceased was Rs. 4,000/- per month, the claim petition should be under Section 166 of the M. V. Act and not under Section 163 of the M.V. Act.

3. It is contention of the learned counsel for the

respondents that claimant was injured in the said accident and got 52% permanent disability. He was getting Rs. 3100/- per month salary. The claimant had not stated that he was getting Rs. 4,000/- salary anywhere. Defence was not taken by the appellant before the Tribunal that claim under Section 163 of the Motor Vehicle Act is not maintainable. The order passed by the Tribunal is legal and valid.

3. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

4. Admittedly, respondent No.1 was got injured in the accident. The issue in this appeal is in respect of the income of the respondent No.1 original claimant, it has come in the evidence of (P.W. No.2 Laxmiknat) who is employer of the respondent No.1 that respondent No.1 was getting Rs. 3100 + Bhatta as salary. The Tribunal has considered Rs.3100/- as salary of respondent No.1 accordingly calculations are made. No defence was taken before the Tribunal that claim petition under Section 163-A was not maintainable, hence said defence cannot be raised in the appeal in view of above, I pass the following order.

ORDER

- (i) Appeal is dismissed. No order as to costs.
- (ii) Pending Civil Applications are disposed of.
- (iii) Respondent No.1 is permitted to withdraw the amount deposited by the appellant if not withdrawn.

**(S.G. DIGE,)
JUDGE**

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