

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 399 OF 2019

New India Assurance Co. Ltd. .. Appellant

Versus

Chhayatai Devidas Walke & Anr. .. Respondents

Mr.S.S. Dargad h/f. Mr. S.G. Chapalgaonkar, Advocate for
the appellant

Mr.P.C. Mayure h/f. Mr.V.S.Badakh, Advocate for
respondent No.1.

Mr.B.S. Chondhekar, Advocate for respondent No.2-Absent.

CORAM : VINAY JOSHI, J.

DATED : 25.02.2022

PC :-

01. Insurance Company came in the appeal
challenging the judgment and award passed by the Member,
Motor Accident Claims Tribunal, Shrirampur, Dist.
Ahmednagar in Motor Accident Claims Petition No. 7 of
2011 dated 30.07.2015. The facts in brief are as the
respondent No.1 lady (claimant) while proceeding by auto-
rickshaw, it was dashed by offending jeep bearing
Registration No. MH-38-2519 causing severe bodily

injuries to her. The offence was registered against jeep driver for rash and negligent act. The claimant lady sustained 40% permanent disablement. She approached to the Tribunal for grant of compensation. On assessment of evidence, the Tribunal has awarded total compensation of Rs.5,15,535/- along with future interest.

02. In this appeal, the insurer has challenged the income of the claimant, percentage of disability and quantum of compensation. Mainly it is contended that the Tribunal has miscalculated 40% amount of the monthly income and erred in quantifying the amount. It is pointed out that the Tribunal held monthly notional income to the tune of Rs.4,500/-. The Tribunal held that since the claimant sustained 40% permanent disability, she is entitled for loss to the extent of 40% of Rs.4,500/- per month. While making calculation, the Tribunal has wrongly calculated 40% amount of Rs.4,500/- as Rs.2,700/- instead of Rs.1,800/-. Pointing said mathematical error in calculation, the insurer has prayed

for reduction of proportionate compensation.

03. The learned Counsel appearing for the claimant has fairly conceded that there was miscalculation on the part of Tribunal. However, he has pointed out that the Tribunal has failed to consider the aspect of addition on account of future prospects and grant of medical expenses. He would submit that the impugned judgment bears reference that the claimant has produced medical bills to the tune of Rs.19,335/- for which the claimant is entitled. The claimant's learned Counsel has also pointed out that the date of birth of the claimant was 14.07.1966 and thus on the date of accident she was 44 years of age. He would submit that as per her age, multiplier of '14' has to be used instead of '13' used by Tribunal. There can be no dispute about use of multiplier of 14 as per age of the claimant. Though the claimant has not filed appeal or cross-objection, however, he can defend the award by pointing other errors of the impugned judgment.

04. The claimant was doing tailoring work. The tribunal has rightly assessed her notional income to the tune of Rs.4,500/- per month. Having regard to above discussion, there shall be addition of 25% on account of future prospects. Moreover, in view of medical bills, lumpsum amount of Rs.25,000/- shall be added towards medical expenses. By use of appropriate multiplier of 14 as per age of claimant, her entitlement would be as below

Sr. No.	Particulars	Amount (Rs)
1	Monthly income of claimant	4,500/-
2	25% addition towards future prospects (4,500/- + 1,125/-)	5,625/-
3	40% permanent disability (5,625/- x 40/100)	2,250/-
4	Annual loss (2,250/- x 12)	27,000/-
5	Application of multiplier of 14 (27,000/- x 14)	3,78,000/-
6	Medical expenses (3,78,000/- + 25,000/-)	4,03,000/-
7	Amount towards conventional heads (4,03,000/- + 65,000/-)	4,68,000/-
	Total compensation	4,68,000/-

05. Since the offending vehicle was insured with the appellant insurance company and was owned by the respondent No.2, they are jointly and severally liable to pay the awarded amount. In view of above, the appeal deserves to be partly allowed. The impugned judgment and award passed in MACP No.7 of 2011 dated 30.07.2015 is modified to the extent of holding that the claimant is entitled for total compensation of Rs.4,68,000/- (Rupees Four Lakhs Sixty Eight Thousand) (inclusive of NFL). Rest of the order remains as it stands. The claimant lady is entitled to withdraw the remaining amount lying in this Court. The appeal stands disposed in above terms.

[VINAY JOSHI,J.]