

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

FIRST APPEAL NO. 542 OF 2009

United India Insurance Company Ltd.,
Through Branch Manager, C.B.O.III,
Kingway, Railway Station Road,
Nagpur

... Appellant

.. Versus ..

1) Ambadas S/o. Mayaram Ishwarkar,
Aged about 47 years, Occ. Agriculturist
and Milk Business,
R/o. Khairi-Betala,
Tahsil Mohadi, Distt. Bhandara

2) Damodhar S/o. Suresh Chopkar,
Aged Major, Occ. Transport and Agriculturist,
R/o. Kothurna, Tah. and Distt. Bhandara

3) Pravin S/o. Suraj Chopkar,
Aged 23 years, Occ. Driver,
R/o. Kothurna, Tah. and Distt. Bhandara

...Respondents

Shri Dhiman B. Chatterjee, Advocate for appellant.
None for respondents.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 20/07/2022

ORAL JUDGMENT (Per : Smt. M.S.Jawalkar, J.)

Heard the learned counsel appearing for the appellant.

2. None appears for the respondents.

3. The only point involved in this matter is that while calculating the amount of compensation, the Motor Accident Claims Tribunal (MACT) at Bhandara has committed an error. The monthly notional income was held as Rs. 4,000/- of the claimant i.e. respondent no. 1 and further presumed loss of income of Rs. 1,200/- per month of the claimant i.e. respondent no. 1 as he has sustained 30% disability. However, the learned Tribunal calculated per year loss of income as Rs. 2800/- X 12 = 33,600/- instead of Rs. 1200/- X 12 = 14,400/-. To that extent, the award of compensation needs to be modified. So also, in view of finding in the proportion of negligence and liability of the claimant i.e. respondent no. 1 will also require to be modified. Thus, there are some errors in the calculations made by learned Tribunal. Accordingly, the error can be rectified.

4. The loss of income of claimant i.e. respondent no. 1 would be Rs. 1200/- X 12 = 14,400 per annum and if multiplied

by 13, it would come to Rs. 1,87,200/-. The learned Tribunal has also awarded an amount of Rs. 26,355/- towards medicine & treatment expenses, an amount of Rs. 2,000/- towards loss of earning and Rs. 1500/- towards loss of milk income from loss of selling milk. Thus, total amount of award comes to Rs. 2,17,055/-. However, as learned Tribunal held 30% contributory negligence on the part of claimant i.e. respondent no. 1, he has to bear proportionate amount of compensation i.e. Rs. 65,116.50. Thus, the liability of non-applicant nos. 1 to 3 i.e. appellant no. 1 and respondent no. 2 & 3 is to pay Rs. 1,51,938.50. Accordingly, I proceed to pass the following order:-

ORDER

- 1) The appeal is allowed.
- 2) The award of learned MACT, Bhandara is hereby modified as under:-
 - i. The claim petition is allowed with proportionate costs.
 - ii. Non-applicant nos. 1 to 3 in claim petition (i.e. appellant no. 1 and respondent nos. 2 & 3) do hereby jointly and severally to pay Rs. 1,51,938.50 along with

interest @ 5% per annum from the date of filing of application till its realization to the claimant.

- iii. The claimant i.e. respondent no. 1 to bear an amount of Rs. 65,116.50.
- iv. The amount deposited by the company over and above this compensation as referred in above clauses is entitled to get refund with accrued interest thereon.
- v. The appeal is disposed of accordingly.
- vi. Decree be drawn up accordingly.

[SMT. M.S. JAWALKAR, J.]