

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

FIRST APPEAL NO. 106 OF 2016

Reliance General Insurance Company .. Appellant
Through its Manager,
R/o. Reliance General Insurance Co.
Adalat Road, Aurangabad.

Versus

1. Javed Khan s/o. Nasirkhan Pathan .. Respondents
Age. 22 years, Occ. At present Nil,
R/o. Karimnagar, Kannad,
Tq. Kannad, Aurangabad.
2. Gotiram s/o. Balwanta Bodkhe,
Age. Major, Occ. Business,
R.o. Azampur, Tq. Khuldabad,
Dist. Aurangabad.

Mr.S.S. Patil, Advocate for the appellant.
Mr.M.R.Deshmukh, Advocate for respondent No.1.

CORAM : KISHORE C. SANT, J.
DATED : 26.10.2023

PC :-

01. Heard learned Advocates for the parties. This appeal is filed challenging judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad dated 17.10.2015 in MACP No.472 of 2014. The learned Member has partly allowed the claim of the respondent/

claimant, who received injury in an accident.

02. The facts in short are that the claimant was riding as a pillion rider on the motor-cycle. A pick-up van gave dash to the motor-cycle. In that accident the claimant received injury to his leg. This accident took place on Aurangabad-Kannad Road near Verul Petrol Pump. On receiving the injuries, he was immediately shifted to the Government Medical College and Hospital, Aurangabad. He was admitted there from 14.05.2014 to 09.07.2014 and he still requires continuous follow up. The learned Member considered that the age of the claimant was only 21 years at the time of accident. Because of the accident now the claimant is not in a position to fold his leg and thus finds it difficult to pursue the daily routine. He was working as a mechanic. Because of the accident now he is not in a position to efficiently do the job as a mechanic. Considering all these factors the learned Member has considered the income of the claimant to be Rs.3000/- per month as a notional income and added 50% as a future prospects. Thus taking into consideration the income as Rs.4500/- per month, the compensation was awarded to the claimant. The compensation of Rs. 4,17,960/- towards loss of future income, Rs.75,000/- towards loss of pain and suffering, Rs.50,000/- towards loss of

marriage prospectus, Rs.75,000/- towards loss of amenities and Rs.46,500/- towards medical expenses is awarded. Thus, the total compensation awarded is Rs.6,64,460/-.

03. The insurance company has approached this Court mainly on the ground that there was contributory negligence as the accident was head-on collision and secondly, on the ground of quantum to the extent of 50%, which is granted by the learned Member towards of loss of marriage prospects.

04. The learned Advocate for the appellant submits that when there was head-on collision, there was clearly a case of contributory negligence. On the point of quantum, he submits that the claim is only injury claim. There is nothing to show that now the injured cannot get married or cannot enjoy marital life. Hence, he submits that the learned Member has erred in granting quantum and marriage prospects and not holding the driver of the motor-cycle liable to pay compensation. The case is clearly of a contributory negligence.

05. Learned Advocate Mr.Deshmukh for respondent No.1 submits that

the injured was not driving the motor-cycle. He was only a pillion rider and the case can at the most be of the composite negligence and not contributory negligence. To the extent of loss of marriage prospects, he submits that since the claimant is not in a position to fold his leg, certainly that would affect his marriage prospects. The amount awarded is minimum on that head. He submits that in-fact the learned Member has committed mistake by taking the notional income as only Rs.3000/-, considering that the accident took place on 25.10.2014, when the notional income was quite high. He, thus, opposes the appeal.

06. On the point of contributory negligence, this Court finds that learned Advocate Mr. Deshmukh rightly submitted that the injured was only a pillion rider and was not driving the motor-cycle and therefore question of contributory negligence would not arise. In this case, this Court also finds substance in his argument that certainly injured has suffered injuries and his prospects of marriage are also affected because of the said injury. Thus, this Court finds that in absence of any perversity in the judgment, there is no substance in the appeal and the appeal deserves to be dismissed. It is informed that the insurance company has already deposited the amount of

compensation in this Court at the time of filing of the appeal. Some part of the amount is already withdrawn by the claimant. The remaining amount which is lying in the office be paid to the claimant, with accrued interest, if any.

07. With the above observations, the appeal stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]