

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1273 OF 2023

Universal Sompo General Insurance Company Ltd.
Unit No.402, 4th Floor, Sangam Complex,
127, Andheri Kurla Complex, Andheri-East
Mumbai -400 059

(Original
Opposite
Party No.2)
Appellant

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Versus

1. Nagnath haridas Kare
Age : 30 years, Occupation : At present Nil
R/o. Lamboti, Tq : Mohol, Dist. Solapur

Original
Applicant

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2. Jahangirbaba Mustafa Shaikh
Age : Adult, Occup: Business
R/o. 7595, Bangarigadda Maryalaguda
Nalgonda, District (A.P.), Pin Code No. 508 207,
(Owner of Truck No.AP-24/TA/6349 involved in
the accident)

Original
Opposite
Party

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Respondents

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Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Rajshekhar S. Alange, Advocate for Respondent No.1

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CORAM : SHIVKUMAR DIGE, J.

DATE : 18th DECEMBER, 2023**JUDGMENT :**

1. The issue involved in this appeal is compensation awarded
twicely under the head of permanent disability and income of claimant is
considered on higher side.

2. It is contention of learned counsel for the appellant that the Tribunal has considered Rs.21,600/- per month as a income of claimant which is on higher side, no evidence was produced on record to prove the income of the claimant. Learned counsel further submitted that the Tribunal has awarded damages of permanent disability at Rs.1,00,000/- whereas the Tribunal had already considered loss of earning capacity due to permanent disability, hence requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.1/claimant was driver and was doing transport business and he was earning Rs.30,000/- per month and he was repaying monthly loan of Rs.15,600/- but the Tribunal has considered his monthly income on lower side i.e. Rs.21,600/- as claimants did not want to prolong the matter hence he has not filed Cross Objection for enhancement of compensation. Learned counsel further submitted that the Tribunal has considered all the aspects while awarding the compensation hence no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Solapur (for short "**the Tribunal**"). To prove the income of claimant, the claimant has examined himself at Exhibit-11, he has stated that he was earning Rs.30,000/- per month. He has stated that he was repaying loan of

installment of Rs.16,000/- per month. Nothing elicited in the cross examination of this witness. To support the evidence of claimant PW-1 the claimant examined PW-7 Pankaj Pawar, employee of Sundaram Finance, he has stated that claimant was repaying monthly loan installment of Rs.15,600/- per month. The statement of repayment of loan is at Exhibit-43. While considering the income of claimant, the Tribunal has observed that the claimant was repaying Rs.15,600/- on monthly basis as installment of loan of his truck in addition to that the Tribunal has considered Rs.6,000/- as a notional income and considered monthly income of claimant at Rs.21,600/-. I do not find any infirmity in it, as it has come on record that the claimant was repaying monthly installment of Rs.15,600/- as repayment of loan and he was maintaining his family. It shows that his income was more than repayment of loan and he has stated that he was earning Rs.30,000/- per month. The claimant has not challenged the income considered by the Tribunal, hence I am considering the income of Rs.21,600/- per month and I do not find any infirmity in it. While awarding compensation the Tribunal has awarded Rs.11,89,728/- towards loss of earning capacity due to permanent disability and Rs.1,00,000/- towards damages for permanent disability. In my view, when the Tribunal has already awarded the amount for disability it cannot be awarded twice under same head.

5. In view of the above, I pass following Order:

- i. The appeal is partly allowed.
- ii. The appellant is permitted to withdraw Rs.1,00,000/- with proportionate interest from the deposited amount.
- iii. The claimant is permitted to withdraw balance amount along with proportionate interest out of deposited amount.
- iv. The statutory amount along with accrued interest thereon shall be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.

6. The appeal is disposed off. All pending applications are disposed off.

(SHIVKUMAR DIGE, J.)