



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3853 OF 2019

- . The Oriental Insurance Co. Ltd.
Through its Br. Manager,
Shivaji Chowk, Parbhani.
Through its authorized signatory,
Administrative Officer, D.O.I.,
Oriental Insurance Co. Ltd.,
Aurangabad.

.... Appellant/
Orig. Respondent No.2

VERSUS

1. Mahada @ Madhav S/o Baliram Tekale
Age: 47 years, Occu.: Private Service
(Now Nil), R/o. Kesapur,
Tq & Dist. Hingoli.
2. Shivprasad S/o Sureshappa Bhogaonkar
Age: 30 years, Occu.: Business,
R/o Near Bus Stand, Sengaon,
Tq. Sengaon, Dist. Hingoli.

.... Orig. Claimant

.... Respondents/
(Orig. Claimant and
Respondent No.1)

.....
Mr. D.P. Deshpande, Advocate for Applicant
Mr. S.V. Suryawanshi, Advocate for Respondent No.1
Mr. P.S. Agrawal, Advocate for Respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

Reserved on : 04.07.2024
Pronounced on: 10.07.2024

ORDER :

1. This first appeal filed by appellant/insurance company challenges the judgment passed by the Motor Accident Claims Tribunal, Hingoli, in M.A.C.P. No.150/2014.

2. On 27.07.2013 in the evening, Gangadhar S/o. Mahada @ Madhav Tekale was proceeding towards village Umra on motorcycle along with his father Mahada and mother Sumitrabai. When they reached in the vicinity of Narsi Namdeo village on Hingoli-Narsi road, one Tata Indica car bearing No. MH-38-2227 came from opposite direction in high speed and gave dash to the motorcycle. All the three persons on motorcycle fell down. Gangadhar, Mahada and Sumitrabai had suffered serious injuries. They were shifted to Madhav Hospital at Hingoli, and thereafter, they were shifted to Nanded for better treatment. On 01.08.2013, Sumitrabai expired at Sanjivani Hospital, Nanded. Mahada was indoor patient at Sai Hospital, Nanded from 27.07.2013 to 24.08.2013. Gangadhar took treatment in the Hospital between 27.07.2013 to 24.08.2013 and then from 17.09.2013 to 25.09.2013.

In the accident, Gangadhar suffered fracture to his femur L-4 on right thigh. By filing M.A.C.P. No.148/2014, he claimed compensation of Rs.6,30,000/-.

Mahada suffered fracture to his femur of right leg and fracture T/F left leg with CLW over head. By filing M.A.C.P. No.150/2014, he claimed compensation of Rs.10,00,000/-, which was subsequently restricted to Rs.8,00,000/-.

For Sumitrabai's death, Gangadhar and Mahada filed M.A.C.P. No.149/2014, claiming compensation of Rs.13,00,000/-.

3. The Tribunal passed a common judgment and allowed M.A.C.P. No.148/2014 in excess, M.A.C.P. No.149/2014 partly and M.A.C.P. No.150/2014 in excess. The insurance company is aggrieved by the quantum of compensation awarded in M.A.C.P. No.150/2014.

4. Heard the learned Advocate for appellant/insurance company, learned advocate for respondent no.1/original claimant and learned advocate for respondent No.2.

5. Learned advocate for appellant/insurance company submits that respondent no.1/claimant claimed that he was doing the job of operator at Vitthal Stone crusher. At the time of accident he was earning salary of Rs.9,000/- per month. Certificate to that effect was issued by the employer of the claimant and was produced on record by the claimant himself and the author of the said certificate was not examined, and therefore, the certificate is not proved on record, and therefore, the Tribunal has erred in relying on the said certificate in calculating the notional income of the claimant. He submits that at the most, the notional income of

respondent no.1/claimant could have been taken @ Rs.200/- per day i.e. 6,000/- per month. He submits that Doctor has not stated in his evidence that claimant would not be in a position to work in future. He submits that the Tribunal has awarded exorbitant compensation towards physical and mental pain @ 2,50,000/-, which should have been @ Rs.1,00,000/-. The Tribunal has also erroneously awarded Rs.27,000/- towards wages of three months holding that claimant was not able to resume his labour work immediately and the period of healing can be taken at three months. He, therefore, submits that exorbitant amount of compensation is awarded to claimant by the Tribunal and the same needs to be reduced.

6. Per contra, learned advocate for respondent no.1/claimant supported the impugned judgment of the Tribunal. He submits that the Tribunal has rightly held the notional income of claimant @ Rs.9,000/- per month on the basis of employer's certificate produced by him. He submits that since future prospectus are not awarded by the Tribunal, the amount of Rs.2,50,000/- is not liable to be interfered with. If we calculate future prospectus, the calculation would come to that only.

7. Heard at length. Perused the record.

8. It is settled legal position that, "claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. [*Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, (2009) 13 SCC, 530*]

9. In *Anita Sharma and Others Vs. New India Assurance Company Limited and Another, (2021) 1 SCC 171*, the Apex Court has held;

"Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt".

10. It is settled legal position that, "the Tribunal exercising quasi-judicial functions are not Courts, and therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor they are bound by strict rules of evidence". [*State of Mysore Vs. S.S. Makapur, (1964) 1 LLJ 24 SC*]

11. Accident and injuries suffered by claimant in the accident are not in dispute. Claimant has examined Doctor in support of his claim, who has stated that claimant was having fracture of supracondylar femur right side with fracture of tibia fibula of right side with C.L.W. over head. Two surgeries were carried out on claimant. Supracondylar plating was done and nailing was done on tibia fibula of left side. Doctor has opined that due to the operation, leg of claimant has shortened and he can walk, but will suffer with some deformity and stiffness in knee. Record indicates that claimant has suffered 25% permanent disability for his entire life.

Claimant has placed on record salary certificate issued by Vitthal Stone Crusher, Kesapur, Taluka and District Hingoli, showing that he was working as operator at Stone Crusher and was getting Rs.300/- per day wages. Suggestion of insurance company that he was not earning that much wages is strongly denied by claimant and that the certificate is false.

12. In the light of aforesaid legal position, there is no merit in the contention of insurance company that, the salary certificate is not proved by examining the author. The Tribunal

is justified in assessing the income of claimant @ Rs.9,000/- per month.

13. Submission of appellant that only Rs.1,00,000/- should have granted under the head of physical and mental sufferings and the Tribunal erred in awarding Rs.2,50,000/- is not acceptable as the Tribunal has failed to award compensation under the head of loss of future prospectus. If loss of future prospectus is to be calculated @ 25% of the annual income, it would come to Rs.27,000/-, therefore, total annual income would come to Rs. 1,08,000 + Rs.27,000 = Rs.1,35,000/-. Claimant was therefore entitled for compensation of Rs.1,35,000/- for future prospectus plus Rs.1,00,000/- towards physical and mental sufferings equals to Rs.2,35,000/-. The Tribunal has awarded Rs.2,50,000/-, which need not be interfered with in these facts.

14. The Tribunal has rightly appreciated the material on record and has awarded fair compensation to the claimant. There is no merit in the first appeal. The first appeal is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE