IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1599 OF 2016

	Dattatraya Vithal Jamdade, Age 33 years, Occupation Nil, Resident of Bhose, Taluka Pandharpur, District Solapur.	…	Appellant
	versus		
1	Sachin Timmappa Asade, Age Adult, Occupation Business, Resident of Waki, Taluka Khed, District Pune.		
2	The New India Assurance Company Limited	….	Respondents

with

FIRST APPEAL NO. 1455 OF 2016

	The New India Assurance Company Limited, Branch Manager, Solapur Branch, Park Chowk, Solapur. Through Mumbai Regional Office-I, New India Bhavan, 2nd Floor, 34/38, Bank Street, Fort, Mumbai – 400 023.	…	Appellant (Org.Insurer)
	Versus		
1	Dattatraya Vithal Jamdade, Age 37years, Occupation At present Nil, Resident of Bhose (K), Taluka Pandharpur, District Solapur.		Org. Claimant
2	Sachin Timmappa Asade, Age Adult, Occupation Business, Resident of Waki, (B) Taluka Khed, District Pune.		Org. Opp. Party Respondents

Mr. R. S. Alange, Advocate for the Appellant in First Appeal No.1599 of 2016 and for Respondent No.1 in First Appeal No.1455 of 2016.
Mr. Devendranath S. Joshi, Advocate for the Appellant in First Appeal No.1455 of 2016 and for Respondent No.2 in First Appeal No.1599 of 2016.

CORAM : SHIVKUMAR DIGE, J.
DATE : 19th MARCH, 2024.

Oral Judgment :

1. The Insurance Company has preferred this appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal"). The claimant has preferred an appeal for enhancement of compensation. As the appeal and cross-appeal are against the same judgment and order, I am deciding it, by this common judgment.

2. It is contention of learned counsel for the Insurance Company that the accident occurred due to sole negligence of the claimant as the claimant took sudden turn on the road and came in front of the offending truck but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the claimant on higher side without any evidence on record. Hence, requested to allow the appeal filed by the Insurance Company and dismiss the appeal filed by the claimant.

3. It is contention of learned counsel for the claimant that the claimant was riding as pillion rider on the motor cycle which was driven by his friend - Shri Korake, so no question of contributory negligence of the claimant arises. Learned counsel further submitted that the claimant was doing milk business, he was the owner of agricultural land and he owned tractor and from the said businesses, he was earning Rs.3,00,000/- per

annum but the Tribunal has considered monthly income of the claimant at Rs.6,000/- per annum, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects. Though claimant has suffered 65% permanent physical disability, due to accidental injuries, the right leg of the claimant, below knee, is amputated. After the accident, the claimant is unable to do any work, his functional disability is 100%. The Tribunal has awarded compensation amount on lower side. Hence, requested to allow the appeal filed by the claimant and dismiss the appeal filed by the Insurance Company.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove the negligence of the driver of the offending truck, the claimant has examined himself at Exhibit-26. He has stated that the accident occurred due to sole negligence of the driver of the offending truck. The Insurance Company has not examined the driver of the offending truck to prove the negligence of the claimant. While dealing with the issue of negligence, the Tribunal has observed that an offence was registered against the driver of the offending truck and the truck driver was solely responsible for the accident. I do not find infirmity in it. In my view, the spot-panchanama of accident shows that the motor-cycle, on which, the claimant was riding was entangled in the wheels of the offending truck and was dragged at a longer distance from the spot i.e. about 30 feet. The motor-cycle was found at the distance of 65 feet away

from the offending truck. It shows that the truck was in high and excessive speed. Moreover, the truck driver did not step into witness box to prove the negligence of the claimant. The claimant was a pillion rider. Hence, I do not see merit in the contention that there was sole/ contributory negligence of the claimant in the said accident.

5.2. To prove the income, the claimant has examined himself, he has stated that he own agricultural land and he was taking cash crops like grapes, sugarcane, banana etc.and from that he was earning around Rs.3,00,000/- per year. He was also running milk business and he was earning around Rs.5,000/- per month from the said business. He was possessing a tractor and he was driving it and the said tractor was purchased from State Bank of India by obtaining loan. He was earning Rs.2,00,000/- per annum from giving the tractor on hire basis. In support of his evidence, the claimant has examined PW4-Sharad Totari, Clerk in Vitthal Sahakari Sakhar Karkhana. He has stated that in the year 2006-2007, the claimant had delivered 144.160 metric tonne sugarcane to their factory. The bill amounts in respect of the sugar cane were paid to the claimant. The said bills are at “Exhibit-51/1 to 51/6”. Nothing elicited in the cross-examination of this witness.

5.3. PW5- Hanumant Mule, Clerk at Vitthal Sarva Seva Sangh has stated that the claimant was a member of the Co-operative Society formed by vehicle owner of sugarcane supplier to Vitthal Sarva Seva Sangh and he produced bills of sugarcane paid to the claimant.

5.4. PW6-Mahadeo Korke, Director of Pandurang Dudh Utpakak Sanstha D.V.S., has stated that the claimant was supplying milk to their dairy around 30 to 40 litres each time i.e. twice in a day and he used to pay monthly average income of Rs.7500/- to 9000/-. A copy of record is at Exhibit-57. Nothing elicited in cross-examination of this witness.

5.5. While dealing with the issue of income of the claimant, considering the evidence on record, the Tribunal has considered monthly income of the claimant at Rs.6,000/- per month, in my view, it is on lower side, it should be 7,000/- per month as the claimant was doing agricultural work, milk business and he used to give tractor on hire basis. He has suffered 65% permanent physical disability, after the accident, he is unable to do any work hence, I am considering Rs.7,000/- as monthly income of the claimant.

5.6. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC) ,*** the claimant is entitled for 40% future prospects.

5.7. The Doctor has given 65% disability certificate. It has come on record that the claimant was doing agricultural work and he was supplying milk. Due to amputation of leg, he is unable to do his work. There is 100% functional disability. Hence, I am considering 100% functional disability.

5.8. The Tribunal has awarded Rs.5,000/- for pain and sufferings, in my view, it is on lower side. Considering the nature of the injuries and disability, I am considering it at Rs.50,000/-. The Tribunal has awarded Rs.5,000/- for loss of amenities in life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for loss of expectations in life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for special diet and conveyance, I am considering it at Rs.25,000/-.

Considering the above calculations, the claimant is entitled for following compensation :

Particulars	Rs.	Amount
Annual Income (Rs.7000/- x 12 months)	Rs.	84000.00
40% future prospects	Rs.	33600.00
Total	Rs.	117600.00
Rs.117600 x 15 multiplier	Rs.	1764000.00
Medical Expenses (Medicines and Dr.Bills)	Rs.	347174.00
Pain and Sufferings	Rs.	50000.00
Loss of Amenities in Life	Rs.	50000.00
Loss of Expectations of Life	Rs.	50000.00
Special Diet and Conveyance	Rs.	25000.00
Total Compensation.	**Rs.**	**2286174.00**

The Tribunal has awarded Rs.11,05,974/-, if this amount is deducted from the amount of Rs.2286174/- considered by this Court, it comes to Rs.11,80,200/-. The claimant is entitled for this amount.

6. In view of above, I pass following order :

1. First Appeal No.1455 of 2016 is dismissed.

2. First Appeal No.1599 of 2016 is allowed.

3. The claimant is entitled for enhanced compensation of Rs.11,80,200/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

3. The Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.

4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount in First Appeal No.1455 of 2016 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

6. The claimant shall pay court fees on enhanced amount as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)