



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

FIRST APPEAL NO. 1283 OF 2024

The Divisional Manager,
National Insurance Co. Ltd.
Shubhrai Towers, Datta Chowk,
Opp. Shalimar Talkies, Solapur.
Policy No. 271400311710004107
Validity : 28.03.2018 to 27.03.2019
Insurer of Car No. MH13/CS0091.
Through its Divisional Office
Divisional Manager Hazare chambers
Railway Station Road Aurangabad
District : Aurangabad

..Appellant

Versus

1. Balasaheb S/o Bhimrao Sulakhe
Age 46 years, occu. Agriculture
R/o Wagholi, Tq. & Dist. Osmanabad

2. Rajan S/o Shankkarao JAdhav
Mobile No. 9423067529
Age 40 years , occu. Busuness
R/o Flat No. 112, Dharmashil Line,
Oppo. ST stand, Murarji Peth, Solapur
(owner of Car No. MH-13/CS-0091)

..Respondents

(no.1 is orig. Claimant No.2
original respondent no.1)

...

Mr. Sudhir V. Kulkarni, Advocate for Appellant.

Mr. P. S. Chavan, Advocate for Respondent No.1.

Mr. D. R. Bhadekar, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 10th FEBRUARY, 2025.

JUDGMENT:-

1. Heard. Admit. Looking to the narrow controversy/limited issue, heard finally by consent of the parties.

2. The appellant/insurer impugns the award dated 11.12.2023 passed by the Motor Accident Claims Tribunal, Osmanabad in M.A.C.P. No.521/2018. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

3. The respondent/claimant suffered injury in accident dated 07.05.2018. He was traveling on motorcycle bearing Registration No.MH-25-V-3320. It is contended that insured Car bearing Registration No.MH-13-CS-0091 gave dash to motorcycle. The car driver drove car from wrong side in rash and negligent manner resulting into accident. The accident was reported to police vide Crime No.142/2018. The offence was registered against Car driver. The respondent/claimant contends that he suffered permanent disablement and loss of earning capacity. Prior to the accident he was earning Rs.2,00,000/- per annum from agriculture, however, due to permanent disablement his income has been hampered. The Tribunal after evaluation of the pleadings of the parties and evidence on record, passed an award of Rs.5,00,000/- alongwith interest @ 7% per annum in favour of claimant.

4. Mr. Kulkarni, learned Advocate appearing for the appellant submits that Appeal is filed mainly on two grounds. Firstly, claimant was rider of motorcycle, documents on record would depict his negligence in the cause of accident, hence, Tribunal ought to have applied principals of contributory negligence. He would further submit that there is no evidence as to the income of the claimant. The Tribunal erroneously assumed notional earning @ Rs.10,000/- per month, which is excessive and exorbitant. Mr. Kulkarni would also point out that claimant could not prove loss of earning capacity.

5. Per contra, Mr. Chavan, learned Advocate appearing for the respondents/claimants submits that accident occurred in the year 2018. The respondent has placed on record 7/12 extract indicating his engagement in agriculture prior to the accident. He invited attention of this Court to order dated 28.09.2018 issued by Ministry of Labour and Employment through Chief Labour Commissioner (C), New Delhi to contend that minimum wages for semi-skilled worker in the agriculture sector shall not be less than Rs.333/- per day. As such, justifies assumption of notional income @ Rs.10,000/- per month. He would further submit that evidence of doctor clearly shows that claimant has suffered 25% permanent disablement making him incapable for continuing hard work required in agricultural operations.

6. Having considered submissions advanced and after perusal of reasons given in the impugned order, apparently there is no dispute about accident involving insured car and motorcycle of the claimant. Immediately after accident, FIR was lodged on 08.05.2018 against driver of offending vehicle. The panchanama was drawn. It shows that motorcycle suffered extensive damage. The road at the spot is 20 feet wide. The claimant entered into witness box and gave details about manner of accident. The charge sheet has been filed against the car driver after due investigation; however, no evidence rebutting the claimant's evidence has been brought on record. The Tribunal has, therefore, rightly concluded that accident occurred due to sole negligence on the part of the Car driver.

7. So far as quantification of the compensation is concerned, the Tribunal observed that claimant has placed on record certified copy of 7/12 extract. It is, therefore, evident that the claimant was an agriculturist by occupation. A judicial note can be taken of the fact

that agriculturists holding small pieces of land themselves cultivates same and contribute their labor in getting yield. Considering this, a person who owns agricultural land and cultivates it personally cannot have an income of less than Rs. 10,000/- per month, as held by the Tribunal. Recently in case of ***Jitendra Vs. Sadiya and Ors (Civil Appeal No.2209/2025 dated 07.02.2025)*** Supreme Court observed that minimum wages notification can be guiding factor to assess just compensation. It is not the case that the claimant was only agricultural labour, he was also owner of the land. In this circumstances, income of the deceased as adopted by the Tribunal need not be disturbed. Rest of the parameters are rightly applied. The 25% amount is added towards future prospects, since deceased was aged 46 years. The multiplier of 13 is properly applied. The loss of earning is considered commensurate to the physical disablement as proved through evidence of doctor. The medical bills are awarded as per actual. In that view of the matter, no case is made out to interfere in the award passed by the Tribunal. Hence, following order

ORDER

- a. First Appeal is dismissed.
- b. In view of dismissal of Appeal, claimant is permitted to withdraw entire amount as deposited by the Insurance Company alongwith accrued interest thereon.

(S. G. CHAPALGAONKAR)
JUDGE