

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.139 OF 2006
WITH
CROSS OBJECTION (ST) NO.5268 OF 2006

The New India Assurance Co. Ltd. } (Org. Opp.
Asian Building, 17, Kamani Marg, } No.2)
Ballard Estate, Bombay-400 033. } ...Appellant

Versus

1. Mr.Titus Jose }
Room No.9, Second Floor, Building No-A- }
10, Sector-18, Phase-III, Nerul, New }
Bombay. }

2. M/s.Elder Pharmaceutical Ltd. }
D/220, T.T.C. Industrial Area, }
Thane-Belapur Road, New Bombay, }
District-Thane. } ...Respondents

Ms.S.S. Dwivedi, for the Appellant.
Mr.T.V. Louis a/w Mr.Aniruddha Lad, Mr.Biju Joseph i/by KLT
Law Associates, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th APRIL 2024

ORAL JUDGMENT :-

. This Appeal is preferred by the Appellant-Insurance

Company against the judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Thane.

2. The Respondents-Claimants have also filed Cross-objection for enhancement of compensation. As Appeal and Cross-objection are against same judgment and order, I am deciding it by this common judgment.

3. It is contention of the learned counsel for the Appellant-Insurance Company that the evidence produced on record shows that amount of Rs.62,000/- was paid for medical expenses, but Tribunal has considered it at Rs.1 lakh, which is on higher side. The learned counsel further submitted that the Tribunal has awarded Rs.40,000/- expenses for conveyance and Rs.50,000/- expenses for special diet, Rs.1 lakh for loss of amenities in life and Rs.96,000/- for loss of future earnings, Rs.1,92,000/- for future expenses, these are on higher side. The learned counsel further submitted that without any evidence on record the Tribunal has awarded the compensation. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the

Respondent-Claimant that, due to accidental injuries the Claimant has suffered 60% disability. The Claimant has suffered neurological deficit in urinary and stool factor of permanent nature, the bladder is affected. The Claimant has suffered fracture to spine with neurological deficy. The Claimant needs at least thrice a day self catheterisation to take urine out and to take laxatives for manually passing stool. Though the doctor has given 60% permanent disability, the functional disability is 100%. The learned counsel further submitted that, the Claimant has to take special diet, as per doctors advise. He is confined to home after the accident. He cannot move without any assistance. He cannot stand for long time. The Tribunal has awarded rate of interest 12%, it should be 15%. The learned counsel further submitted that the amount of compensation under various heads are given on lower side, it should be increased. Hence, requested to allow the Cross Objection and dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

6. The disability of the Claimant has not been

challenged by the Appellant-Insurance Company. To prove the disability the Claimant has examined himself. He has stated that due to accident he had sustained injuries including fracture to his spinal cord, left eye, below left side shoulder, left palm, left leg and other injuries. He has further stated that he was admitted in Sterling Hospital at Vashi for 85 days and he underwent major surgery for spinal cord on 25th July 1994. During that operation steel rod was inserted in spinal cord. He further stated that he has started problem of passing urine. Catheter was inserted to pass the urine. He also faced the problem of passing stool which was to be done manually. Due to continuous rest he had sustained bed-soars. The Claimant has produced medical papers and discharge card of the hospital on record. He further stated that he was admitted for the treatment of compression fracture D-12 and L-1 involving bladder and bowel. He further stated that he had been to Kerla for treatment at Pushpagiri Hospital and he was admitted there for the period of 14 October 1995 to 31st October 1995. In support of his case the Claimant has examined Dr.D.P. Govekar and PW-3 Dr. Vivek Birla, the Neurologist, Urologist

and Andrologist. PW-2 Dr.Govekar has stated that he had examined the Claimant and issued disability certificate, it is at Exhibit-40. This witness further stated that the Claimant has suffered 60% permanent physical disability. This witness further stated that due to disability the Applicant is unable to lift the weight, to stand with closed eye, to stand on his toes, decreased sensation of bone, thighs and back, to use catheter, to strain for stool and occasionally to manual evacuation. In cross-examination this witness admitted that he is not Neurologist nor Neuro Surgeon. He further admitted that there are several reasons for urinary track infection and compression to vertebra occurs. PW-3 Dr.Vivek Birla has stated that as per his observations the Claimant has suffered fracture to spine in vehicular accident with neurological deficit. There was neurological deficit in urinary and stool fracture of a permanent nature. The bladder was affected. The Claimant needs at least thrice a day self catheterisation to take urine out and to take laxatives for manually passing stool. There was future possibility of getting kidney failure due to back pressure charges in kidney or

bladder stone due to stasis urine. He further stated that in future the Claimant is likely to suffer from bilateral kidney failure as a effect of neurogenic bladder. He has admitted that he is not Neurologist and the assessment regarding any problems of kidney cannot be treated or assessed by the Neurologist.

7. While dealing with the issue of disability of the Claimant the Tribunal has observed that Claimant is undergoing the treatment continuously using catheter, he had undergone self catheterisation training since the date of accident. A person who has to use catheter and has to pass the stool manually, who has sustained the compression fracture of spinal cord involving bladder and bowel is not expected to do any work as a normal person. He is unable to work or to do any job. He was working as a welder, but he is not able to do job, he has lost his occupational capacity totally and on that ground the Tribunal has awarded compensation under various heads. I do not find infirmity in it. It has come on record that the Claimant was working as Welder and getting salary of Rs.2,500/- per month.

8. While calculating loss of future earning the Tribunal

has considered Rs.5,000/- per month. It is contention of learned counsel for the Appellant-Insurance Company that, it is on higher side. In my view, the Claimant was permanent employee. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi¹***, the Claimant is entitled for 50% future prospects on this amount, it comes to Rs.3,750/-, but Tribunal has considered Rs.5,000/-. The Tribunal has awarded Rs.1,90,000/- for catheterisation. It has come on record that, the Claimant has to make catheterisation for thrice in a day, but Tribunal has awarded amount under this heads on lower side. Moreover, the Tribunal has not awarded amount for loss of expectation's of life and considering the nature of the injuries of the Claimant, the Tribunal has not awarded amount for attendant charges, these amount's can be matched with compensation awarded on higher side by the Tribunal under head of loss of future earning and other heads. The compensation awarded by the Tribunal is proper, hence enhancement in it is not required.

9. In view of above, I pass following order.

1 *2017 ACJ 2700 (SC)*

ORDER

- (i) The Appeal is dismissed.
- (ii) The Cross-objection is dismissed.
- (iii) The Claimant is permitted to withdraw deposited amount alongwith interest.
- (iv) The statutory amount alongwith interest in Appeal No.139 of 2006 be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (v) All pending Civil and Interim Applications in Appeal and Cross Objection are disposed of.

(SHIVKUMAR DIGE, J.)