IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.301 OF 2014
WITH
CIVIL APPLICATION NO.761 OF 2014

The United India Insurance Company Ltd. .. Appellant

Vs.

Markande Ramadhikari Jha and Anr. .. Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the appellant

CORAM : K.K.TATED, J.
DATED : 13/02/2015

PC:

1 Heard the learned counsel for the appellant.

2 This appeal is preferred by Insurance Company challenging the judgment and award dated 20.11.2012 passed by MACT, Mumbai in Claim Application No.1927 of 2005 awarding compensation of Rs.1,30,000/- inclusive of No Fault Liability together with simple interest @ 7.5% p.a. from the date of filing of Claim Petition till realisation of the amount.

3 This First Appeal is taken up for final hearing at the stage of admission itself as it is not necessary to call R & P considering the facts and circumstances of the present case and the documents on record.

4 The respondent claimant was 35 years old on the date of accident and was serving with M/s.Daka Moni Latics Pvt. Ltd. He was earning Rs.10,000/- as salary per month. He was passing by the road on 11.4.2005 at about 11.30 p.m. At that time, one Maruti Car bearing Registration No.MH-01-R-6540 came from opposite side direction at a very fast speed and dashed the claimant and then dashed the wall of the house of one Mr.Jayprakash R. Yadav. In the said accident, the applicant suffered fracture on left 5th and 6th ribs, linear abrasions on right thigh, contusion of bone etc. He was under treatment at Jayna Hospital from 12.4.2005 to 23.4.2005. Claimant placed on record police papers of Samta Nagar Police Station, statement, panchnama etc. He spent Rs.47,856/- for hospitalisation and medicines and placed on record original bills of Rs.15,347/-. He has also spent Rs.5,000/- towards special diet, and Rs.3,000/- towards conveyance. He placed on record disability certificate issued by Dr.Vrajesh C. Shah showing that he sustained permanent partial disability to the extent of 20%. In claim petition he claimed compensation of Rs.2 lacs. The trial court considering the evidence on record held that claimant was entitled to following compensation:

a)	Two fractures (Disability)	Rs. 50,000/-
b)	Pain and suffering	Rs. 15,000/-
c)	Loss of amenities of life	Rs. 15,000/-
d)	Special diet and conveyance	Rs. 10,000/-
e)	Loss of salary for three months	Rs. 30,000/-
f)	Medicines and medical treatment	Rs. 10,000/-

		Rs.1,30,000/-
		=======

5 The Tribunal awarded Rs.1,30,000/- with interest @ 7.5% p.a. by way of compensation. Being aggrieved by the judgment and award dated 20.11.2012 passed by the Tribunal, Insurance Company preferred the present First Appeal.

6 The learned counsel for the appellant submits that the Tribunal erred in coming to the conclusion that the claimant is entitled compensation of Rs.1,30,000/- with 7.5% interest. He further submits that the Tribunal failed to appreciate that the claimant has not placed on record any documentary evidence to show that claimant suffered loss of salary for 3 months. He further submits that the Tribunal erred in coming to the conclusion that the claimant is entitled 50% for two fractures (disability). He further submits that the Tribunal failed to appreciate that the driver of Maruti Car i.e. offending vehicle was not holding valid license and therefore, Insurance Company is not liable to pay any compensation.

7 On the basis of above submissions, the learned counsel for the Insurance Company submits that the impugned judgment and award passed by the Tribunal holding that the Insurance Company is liable to pay compensation is liable to be set aside and also the compensation awarded is on higher side.

8 I have heard the learned counsel for the appellant at length. I have gone through the papers and proceedings placed on record in the above mentioned matter. On the basis of pleadings and the submissions made by the learned counsel for the Insurance Company following two

issues are involved in the present First Appeal:

> "a) Whether the amount awarded by the Tribunal towards compensation is on higher side?
>
> b) Whether the Insurance Company is not liable to pay any compensation on the ground that the Driver of the Offending Vehicle was not holding a valid license?"

9 In the present proceeding, claimant placed on record certified copy of FIR, hospital papers, statement etc. In an accident which occurred on 11.4.2005 he suffered fracture of left 5th and 6th ribs, linear abrasion on right thigh near knee, linear abrasion and other injuries. At the time of accident, he was 35 years old and was working with M/s.Daka Mono Latics Pvt. Ltd. He was earning sum of Rs.10,000/- per month. Because of accident he had to take treatment in Hospital from 12.4.2005 to 23.4.2005. He paid hospital bill of Rs.47,856/- out of which claimants being rejected the bill of Rs.15,357/-. The claimant suffered 20% permanent partial disability which is going to adversely affect his future prospects.

10 Considering these facts the Tribunal awarded sum of Rs.1,30,000/- only. Considering the age of claimant, his salary per month and the injury sustained by him, I do not find that the Tribunal has awarded excess amount to the claimants. Hence, issue no.1 is answered in the negative.

11 The objection raised by the Insurance Company that they are lot liable to pay compensation as the driver of the offending car at the time of accident needs to be considered.

12 In the present case, except making bare statement in written statement, Insurance Company has not placed on record any documentary evidence and did not examine any witness from the office of the RTO to show that the Driver of the Offending Vehicle was not holding a valid license. These facts are considered by the trial court in paragraph 7 of the impugned judgment and rightly rejected the objection. Hence, the objection raised by the Insurance Company cannot be upheld. Therefore, the issue is answered against the Insurance Company.

13 On the basis of above mentioned facts and circumstances, I do not find any substance in the present First Appeal. Hence, following order:

a) First Appeal is dismissed.

b) Sum of Rs.25,000/- deposited by Insurance Company at the time of filing of present First Appeal along with accrued interest if any, be transferred to the MACT Mumbai in the account of Claim Petition No.1927 of 2005.

c) In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)