IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.768 OF 2014
WITH
CIVIL APPLICATION NO.3149 OF 2013

The Oriental Insurance Co. Ltd. .. Appellant

Vs.

Shri Annasaheb Yeshwant Wadje and Others .. Respondents

Mr.D.S.Joshi for the appellant

CORAM : K.K.TATED, J.
DATED : 13/03/2015

PC:

1 Heard the learned counsel for the parties.

2 This appeal is preferred by Insurance Company challenging the judgment and award dated 10.09.2012 passed by MACT, Nasik in MACP No.416 of 2007 awarding a sum of Rs.70,000/- (including amount of Rs.25,000 towards no fault liability) with 6% interest p.a. by way of compensation to the respondent claimant.

3 In the present proceeding, the accident occurred on 04.04.2004 between two motor cycles in which the claimant sustained fracture injury to his both legs as well as stomach. After the accident, claimant was taken to Rural Hospital, Dindori and after taking treatment in Rural

Hospital he was shifted in Shushrut Hospital where he was admitted till 04.07.2004 i.e. more than 2 ½ months. He spent more than Rs.88,000/- towards medical expenses. Prior to the accident he was doing agricultural work and was earning Rs.40,000/- per year. In the said accident, the claimant sustained 15% permanent disability. On the basis of these facts the respondent claimant filed Claim Petition No.416 of 2007 in the MACT at Nasik under section 163-A of the Motor Vehicles Act, 1988 claiming sum of Rs.70,000/- by way of compensation. The Tribunal considering the evidence on record, disability certificate 'Exhibit 26', discharge card 'Exhibit 27' and medical bills produced by the claimant at 'Exhibit 25' held that the claimant is entitled compensation of Rs.70,000/- with 6% interest.

4 Being aggrieved by the said judgment and award dated 10.09.2012 passed by the Tribunal, the appellant Insurance Company preferred the present First Appeal on following grounds.

> “(a) The learned Tribunal erred in recording a finding that the claim petition under Section 163-A is also based on No Fault Liability as against the recent verdicts of the Honourable Supreme Court of India.
>
> (b) The learned Tribunal erred in granting compensation when the Claimant himself is one of the tort-feasors hence not entitled to claim compensation from the Appellant.
>
> (c) The learned Tribunal erred in not considering a vital

aspect that the Insurance Policy covers the risk of the Third Party and owner-driver only and since the Claimant was not owner of the vehicle, the Appellant is not liable to pay any amount to the Claimant.

(d) The learned Tribunal erred in holding the Appellant liable to pay compensation when the FIR was registered against the other Motorcycle involved in the accident which was not insured with the present Appellant.

(e) The learned Tribunal erred in holding that the Claim Petition is maintainable when admittedly the son was the owner of the Motorcycle which was driven by the original Claimant since the Claimant steps into the shoes of the owner of the vehicle.

(f) The learned Tribunal misread the provisions of Section 163-A of the Motor Vehicles Act and erroneously held that the requirement of proving negligence is dispensed with."

5 The learned counsel for the appellant submits that the tribunal erred in coming to the conclusion that the respondent claimant is entitled sum of Rs.70,000/- by way of compensation in application filed under section 166 of the Motor Vehicles Act.

6 The learned counsel for the appellant submits that the trial court

failed to appreciate that the claimant himself was the son of the owner who was driving the Motor Vehicle and therefore, Insurance Company is not liable to pay any compensation. He further submits that in the present proceeding, the Tribunal has awarded sum of Rs.60,000/- towards medical expenses whereas as per Schedule 2 Section 163A, Tribunal can award maximum Rs.50,000/- towards medical expenses. He further submits that the Tribunal failed to consider the fact that the claimant has not placed on record any documentary evidence to show loss of income for that period. On the basis of these submissions, the learned counsel for the Insurance Company submits that impugned judgment and award passed by the tribunal is liable to be set aside.

7 I have heard the learned counsel for the appellant Insurance Company at length. I have also gone through the copy of written statement filed by the Insurance Company in the Trial Court and other documents. In the present proceeding, the claimant sustained fracture injury to his both legs as well as stomach. After the accident he was hospitalised for more than 3 months. He spent more than Rs.88,000/- towards medical expenses. He was in hospital for more than 2 ½ months. Claimant also placed on record disability certificate at 'Exhibit 26', medical certificates at 'Exhibit 20 – 24' and discharge chard at 'Exhibit 27'. Claimant also placed on record medical bills along with list at 'Exhibit 25'. Admittedly, the claimants have proved the fact that he has spent more than Rs.88,000/- towards his medical treatment. The claimant was doing agricultural work and was earning near about Rs.40,000/- per year. But since the accident he was unable to do his normal work because he sustained fracture injury to his right leg and he

was required to undergo fracture operation on his stomach and therefore, he was unable to do any hard work. In the said accident, he sustained 15% permanent disability.

8 Considering these facts, the Tribunal has awarded meagre amount of Rs.70,000/- including amount of Rs.25,000/- towards no fault liability with 6% interest. Though the learned counsel for the respondent Insurance Company raised several issues about the maintainability of the application filed by the claimant, whether the claimant is entitled compensation, whether the Tribunal can award medical charges of more than Rs.50,000/-, I do not find any reason to go into the merits of the matter on all these points because in the present matter, Tribunal has granted meagre amount of Rs.70,000.

9 Hence, First Appeal stand dismissed.

10 In view thereof, Civil Application No.3149 of 2013 does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)