

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 927 OF 2015

National Insurance Company Ltd. ... Appellant
Vs.
Rahul Jotiram Wadnkar & Anr. ... Respondents

**WITH
CIVIL APPLICATION NO. 3499 OF 2015 IN F.A. NO. 927 OF 2015**

Rahul Jotiram Wadnkar ... Applicant
Vs.
National Insurance Company Ltd. ... Respondent

Mr. S.S. Dwivedi, Advocate for the appellant.
Mr. Akshay P. Shinde, Advocate for respondent no. 1.

**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 21st October, 2015**

P.C.:

This Appeal is directed against the judgment and award dated 14th March, 2014 passed by the Member, Motor Accident Claims Tribunal, Kolhapur thereby granting an amount of Rs.3,44,000/- with interest @ 7.5% p.a. The original claimant is 22 years old boy who met with an accident on 15th May, 2009 when he was driving motorcycle. The truck came in high speed in a rash and negligent manner from Ratnagiri and gave dash to the motorcycle. He suffered number of fractures. He filed a claim for compensation, pursuant to which, the insurance company appeared. Being aggrieved by the compensation awarded by the

Tribunal, the insurance company has filed this Appeal. The challenge given in the Appeal is mainly on the point of quantum and contributory negligence.

2. The learned counsel for the appellant has submitted that in the panchnama dated 15th May, 2009 the police authorities prosecuted the original claimant for the offences under Motor Vehicle Act and the Tribunal ought to have considered the defence of the Insurance company of contributory negligence.

3. The learned counsel for the respondent/original claimant opposed this Appeal and submitted that the original claimant has tendered the evidence, however, the insurance company did not file written statement and did not adduce any evidence on the point of contributory negligence.

4. Perused the judgment and notes of evidence. The original claimant has examined himself so also the evidence of Dr. Vaijnath Bajrang Rahate is adduced on the point of injuries sustained to the claimant, who deposed that the claimant has received comminuted fracture, upper end humerus and number of other fracture of tibia fibula and clavicle right side, with head injury. The disability certificate Exhibit 30 reveals that the respondent/original claimant has sustained permanent

disability of 50%. On the point of income, the Tribunal has rightly considered notional income of Rs.3,000/- per month. The claimant was 22 years old and therefore, multiplier 18 is also rightly considered. Thus, the total loss of income is taken as Rs.3,24,000/-. Considering the injuries and the treatment given to the original claimant, medical expenses Rs.15,000/- is taken. In fact, this amount of medical expenses is less, however, considering the total amount, it appears just and adequate. Hence, the First Appeal is dismissed. Civil Application is also accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)