

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2884 OF 2016

Reliance General Insurance Company Ltd,
 A-Wing, Above HDFC Bank, Ambar Plaza,
 Station Road, Ahmednagar through its
 Authorized Official, Adalat Road,
 Aurangabad.

... Appellant

Vs.

1. Abhimanyu Bapu Backhar,
 Age 19 yrs, Occ. Education,
 R/o Sajalpur under village,
 Nandgoan-Shingve,
 Tq. & Dist. Ahmednagar.

2. Machhindra Eknath Agase,
 Age: Major, Occ. Business,
 R/o. Kandobachi Wadi,
 Tq. Pathardi, Dist. Ahmednagar.

... Respondents

 Mr. A.S. Uspanpurkar, Advocate for the Appellant.
 Mr. M.R. Sonawane, Advocate for the respondents.

CORAM : P.R. BORA, J.
DATE : 08-12-2016.

ORAL JUDGMENT :

1. With consent of the learned counsel appearing for the parties the appeal is finally heard at the admission stage. The appellant has challenged the judgment and award passed in M.A.C.P. No. 208 of 2012 by the Member, Motor Accident Claims Tribunal at Ahmednagar on 21.04.2016.

2. The aforesaid claim petition was filed by present

respondent no.1, claiming compensation on account of injuries sustained by him in a vehicular accident happened on 22.07.2011 having involvement of a motorcycle bearing registration no. MH-16-AR-5063 owned by present respondent no.1 and insured with the present appellant. It was the contention of the respondent (hereinafter referred to as the 'claimant') that because of the injuries caused to him in the alleged vehicular accident he suffered 27% permanent disability which has resulted in causing 100% loss in his earning capacity. The age of the claimant was stated to be 19 years on the date of the accident. It was also the contention of the claimant that, he was contributing to the milk business of his family and was also helping his father in cultivating the agricultural land. It was the further contention of the claimant that, because of the permanent disablement incurred by him, he may not be able to do any job in future and had become incapable of carrying out any job or work. On all these grounds, the compensation of Rs. 4,35,000/- was claimed by the claimant. The claim petition was resisted by the appellant-insurance company on several grounds. The learned tribunal, after having assessed the oral and documentary evidence placed on record before it awarded the compensation of Rs. 4,07,625/- to the claimant under different heads. Aggrieved by, the insurance company has filed the present appeal.

3. Shri Usmanpurkar, the learned counsel appearing for

the appellant-insurance company criticised the judgment on various grounds. The learned counsel submitted that, while the granting compensation to the tune of Rupees Three Lakhs under the head of 27% permanent disability, the learned Tribunal has not provided any cogent reason or has not made any discussion as to on basis of which evidence the amount of compensation is determined by the tribunal. Learned counsel submitted that, merely relying on a judgment of the Hon'ble Apex Court no such compensation could have been awarded by the tribunal.

4. The learned counsel further submitted that, the tribunal has wrongly awarded a sum of Rs. 25,000/- to the claimant under the head of future medical expenses, though, there is absolutely no evidence. The learned counsel further submitted that, the claimant was a non earning person and, as such, no such higher compensation could have been awarded by the tribunal. The learned counsel further submitted that, even if the income of the claimant is assumed on the notional basis to the tune of Rs.3,000/- per month and, accordingly, the loss of income is assessed holding that the claimant has incurred 27% permanent disability, the compensation under head of loss of income would come to Rs. 1,74,960/- and if the amount of compensation granted by the tribunal under other heads is maintained as it is even then the total amount of compensation may not exceed to Rs. 2,87,500/- and that much was the just and proper compensation payable to the

claimant. The learned counsel further submitted that, the compensation as awarded of Rs. 4,07,625/- is unreasonable and without any evidence. The learned counsel, therefore, prayed for setting aside the impugned judgment and award and to re-determine the amount of compensation on the basis of evidence and on the basis of the calculations suggested by the insurance company.

5. Shri Sonawane, the learned counsel appearing for the claimant supported the impugned judgment and award. The learned counsel submitted that, having regard to the judgment of the Hon'ble Apex Court in the case of **Master Mallikarjun V/s. Divisional Manager, National Insurance Company Limited and Anr.**, reported in **AIR 2014 SC 736**, the tribunal has correctly determined the amount of compensation under the head of permanent disability. The learned counsel submitted that, in the cited judgment the Hon'ble Apex Court has clearly laid down that in case of non-earning persons having suffered the disability in between 10% to 30% the amount of compensation is to be determined as has been prescribed by the Hon'ble Apex Court in the aforesaid judgment. The learned counsel submitted that, relying on the aforesaid judgment and considering that, the claimant has incurred 27% permanent disability, the tribunal has correctly awarded a sum of Rupees Three Lakhs towards compensation under the head of permanent disability. The learned counsel further

submitted that, the claimant, in his testimony before the court has provided sufficient particulars as about his future medical treatment. The learned counsel submitted that the claimant will be required to remove the implants and for that the expenses would be even more than Rs. 25,000/-. The learned counsel submitted that, in such circumstances the tribunal has awarded a just amount of Rs.25,000/- under head of future medical expenses. The learned counsel further submitted that, in fact towards pain suffering a very meager sum has been awarded by the tribunal of Rs. 15,000/-. The learned counsel submitted that, in fact in view of the guidelines laid down by the Hon'ble Apex Court in the recent judgments the reasonable amount under the said head would have been up to Rupees One Lakh. Considering the aforesaid fact, the learned counsel submitted that, no interference is required in the impugned judgment and award. The learned counsel, therefore, prayed for dismissal of the appeal.

6. I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. I have also perused the impugned judgment and the other material on record. The learned counsel for the respondents has tendered across the bar copies of the evidence adduced before the tribunal and the copy of the permanent disability certificate filed on record of the tribunal. On perusal of the impugned judgment, apparently, it does not appear to me that, the tribunal has committed any error in

determining the amount of compensation. Though, it was sought to be canvassed by the learned counsel for the appellant that the sum of Rupees Three Lakh awarded by the tribunal towards permanent disability incurred by the claimant is unreasonable and is apparently on higher side, I am not convinced with the arguments so advanced. It is true that the tribunal has not made a detail discussion for awarding the compensation to the aforesaid extent. The tribunal has, however, made a reference to the judgment of the Hon'ble Apex Court in the case of **Master Mallikarjun** cited supra. In the aforesaid case the Hon'ble Supreme Court in para 12 of the judgment has laid down certain guidelines, I deem it appropriate to re-produce the observations made and the conclusions recorded by the Hon'ble Apex Court which are thus:

12. *Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 Lakhs; upto 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:-*

HEAD	COMPENSATION
AMOUNT	
<i>Pain and suffering already undergone and to be suffered in future, mental and physical shock,</i>	<i>Rs.3,00,000/-</i>

hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.

Discomfort, convenience and loss of earnings to the parents during the period of hospitalization. Rs.25,000/-

Medical and incidental expenses during the period of hospitalization for 58 days. Rs.25,000/-

Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment. Rs.25,000/-

TOTAL Rs.3,75,000/-

7. In view of the guidelines laid down by the Hon'ble Apex Court, it appears that, the tribunal has not made any more discussion while awarding the compensation to the aforesaid extent. It does not appear to me that, any interference is required in the amount of compensation so awarded. So far as, medical expenses are concerned the amount of compensation awarded by the tribunal is based on the actual evidence produced before the court. The learned counsel for the appellant insurance company has also not seriously disputed the amount as awarded under the head of medical expenses. In so far as, future medical expenses are concerned, there was sufficient evidence for awarding the compensation under the said head. The amount of compensation awarded by the tribunal under other heads cannot be in any way termed to be unreasonable.

8. After having considered the entire material on record it

does not appear to me that, the tribunal has committed any error in awarding the compensation of Rs. 4,07,625/- to the claimant. The Appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed.

9. The amount of compensation has been deposited by the appellant insurance company in this court. In view of the fact that, the appeal has been dismissed by this court, the claimant shall be permitted to withdraw the deposited amount along with the interest accrued thereon. Civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE

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