

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

FIRST APPEAL NO.3684 OF 2016

TATA AIG General Insurance Company Ltd.,
Through its Manager,
Mrs. Samta Sinha,
Age : 32 years, Occu : Service,
R/o. C/o. TATA AIG General Insurance
Company Ltd., 3rd floor, The orion,
5 Koregaon park road, Pune

..Appellant
(Orig. Respondent No.3)

Versus

1. Shaikh Mehmood Sk. Mohammad,
Age : 45 years, Occu : Business,
R/o. Dukkhi Nagar, Old Jalna, Jalna,
Tal. & Dist. Jalna (Orig. Claimant)
2. Gotiram s/o. Narayan Meher
Age : Major, Occu : Agriculture &
Business, R/o Zari, Tal. Khultabad,
Dist. Aurangabad (Orig. Respondent No.1)
3. Ishwar s/o Narayan Meher,
Age : 34 years, Occu : Driver,
R/o. Zari, Tal. Khultabad, (Orig. Respondent No.2)
Dist. Aurangabad

.. Respondents

.....

Advocate for appellant : Mr N.P. Raje & Mr S.S. Patil,
Advocate for respondent no.1 : Mr V.M. Humbe

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CORAM : P.R. BORA, J.
DATE : JULY 5, 2017.

ORAL JUDGMENT :

1. The present appeal is filed by the appellant / Insurance Company challenging the Judgment and Award passed by Motor Accident Claims Tribunal, Jalna, on 12.04.2016, in Motor Accident Claim Petition No.76/2014.

2. The respondent no.1 had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him in the vehicular accident happened on 14.03.2013 having involvement of a Tata Eicher Canter bearing registration no. MH-20-AT-4520 (hereinafter referred to as the 'Canter') belonging to respondent no.2 herein and insured with the appellant / Insurance Company. It was the case of respondent no.1 that, when, at the relevant time, he was proceeding towards Jalna by his Tata Safari bearing registration no.MH-26-H-2222 (hereinafter 'Tata Safari'), the Canter was ahead of him and was also proceeding towards Jalna. It was his further contention that, the driver of the said Canter suddenly without giving any signal or indication took a 'U' turn because of which, Tata Safari which was being driven by him got dashed with the said Canter, and in the accident so happened, he received severe injuries to his right leg. It was his further contention that, he was required to take a long treatment and out of the injuries caused to him in the alleged accident he suffered 30% permanent disablement.

3. It was his further contention that, he was working as a Contractor with M.S.E.B. and used to earn around Rs.20,000/- per month. The respondent no.1 had claimed the compensation of Rs.18.00 Lakhs from the owner and insurer of the said Canter. The claim petition so filed was resisted by the appellant / Insurance

Company on several grounds. The Insurance Company had raised the grounds of contributory negligence on the part of the injured. Percentage of permanent disablement was also disputed by the Insurance Company. The learned Tribunal, after having assessed oral and documentary evidence brought before it, held the respondent no.1 entitled for total compensation of Rs.8,25,091/- jointly and severally from the owner and insurer of offending Canter. Aggrieved by the said judgment & order, Insurance Company has filed the present appeal.

4. Shri. Patil the learned Counsel appearing for the appellant / Insurance company assailed the impugned Judgment and Award on various grounds. The learned Counsel submitted that the tribunal has utterly failed in appreciating that the accident could not have occurred if the respondent no.1 would have been diligent enough. The learned Counsel submitted that, no such evidence has come on record to indicate that, Canter suddenly took 'U' turn in such a manner that there was no opportunity for respondent no.1 to apply breaks and allow the said truck to take 'U' turn and then proceed further. The learned Counsel submitted that, the way the accident had happened the entire negligence cannot be attributed on the part of the driver of the Canter. The learned Counsel further submitted that, the injured himself was equally responsible in occurrence of the alleged accident. The learned Counsel submitted that, these aspects are ignored by the tribunal while determining the amount of compensation. The learned Counsel further submitted that, while determining the amount of compensation also the tribunal has failed in appreciating that there was no evidence brought on record by the respondent no.1/ claimant to prove that, there was decrease in the

actual income he used to earn before the accident. The learned Counsel submitted that, in absence of any such evidence, the tribunal should not have awarded any amount of compensation towards loss of future income.

5. The learned Counsel Shri. Patil further submitted that, the tribunal has also unreasonably awarded a sum of Rs.1,50,000/- to the respondent no.1/claimant under the head of loss of pain and suffering. The learned Counsel further submitted that, once the compensation was awarded under the head of pain and suffering, the tribunal should not have awarded the further sum of Rs.1,00,000/- under the head of loss of amenities. The learned counsel further submitted that, towards dietary expenses and travelling charges also no amount could have been awarded by the tribunal since there was absolutely no evidence on the said issues. The learned Counsel further submitted that, after having assessed the total compensation the court has awarded the amount of Rs.25,000/- towards NFL amount without making any discussion therefor. The learned Counsel submitted that, the amount so awarded was wholly irrelevant and no such amount could have been awarded by the tribunal. The learned Counsel prayed for modifying the award by holding the respondent no.1 / claimant equally responsible for occurrence of the alleged accident and by redetermining the amount to be awarded under the different heads as has been awarded by the tribunal.

6. Shri. Humbe learned Counsel appearing for the respondent no.1 / original claimant resisted the submissions made on behalf of the appellant / Insurance Company. The learned Counsel submitted that, in his testimony before the Court the respondent no.1 /

claimant had specifically deposed that, after meeting with an accident, his income capacity has been considerably decreased. The learned Counsel further submitted that, the respondent no.1 / claimant had also testified about the pains suffered by him and about his inability to enjoy amenities of life as a normal human being. The learned Counsel submitted it was the case of the appellant/Insurance Company that, in occurrence of the alleged accident, respondent no.1 was also negligent, the defence so taken by it must have been proved by it by adducing necessary evidence in that regard. The learned Counsel submitted that, the Insurance Company has admittedly not adduced any oral or documentary evidence. The learned Counsel submitted that, no interference is therefore required in the Award so passed.

7. I have carefully considered submissions made on behalf of the learned Counsel appearing for the parties. I have also perused the impugned judgment, the evidence on record and the other material placed on record. In so far as the first objection raised by the appellant/ Insurance Company as about the contributory negligence on the part of the respondent no.1, it has to be stated that, when such was the defence raised by the Insurance Company, it was incumbent on the part of the Insurance Company to adduce necessary evidence to substantiate the defence so raised by it. Admittedly, no one has entered into witness box on behalf of the Insurance Company. From the discussion made by the tribunal, it does not appear to me that, the tribunal has drawn any incorrect inference in so far as the issue of negligence is concerned. In absence of any contrary evidence on record, it does not appear to me that, any interference is required in the conclusion so recorded by the

tribunal on the point of the negligence.

8. In so far as the determination of the amount of compensation is concerned, the principle objection raised by the Insurance company is pertaining to the amount of compensation awarded by the tribunal towards future loss of income. It was vehemently argued by Shri. Patil that, when the respondent no.1 had failed in proving the functional disability, no amount could have been awarded under the said head. In light of the evidence on record, the objection raised by Shri.Patil cannot be accepted. The respondent no.1 had sufficiently proved by examining the concerned Medical Officer that, he has incurred 30% permanent disablement. As has come on record, the respondent no.1 had suffered severe injuries to his right leg which have resulted in shortening of the said leg. From the evidence on record, a reasonable inference can be drawn that the permanent disablement so incurred by respondent no.1 will necessarily have an effect of decreasing the earning capacity of the respondent no.1. Though it is true that, the tribunal has not made any more discussion on this point, the ultimate conclusion recorded by the tribunal cannot be disturbed. The tribunal, considering the age of the respondent no.1 and taking into account his earning capacity, has assessed the compensation to the tune of Rs.3 Lakhs under the head of the future loss of income. It does not appear to me that, the amount so awarded by the tribunal is in any way unreasonable.

9. Though there was no documentary evidence produced on record as about the dietary expenses or travelling expenses, the tribunal taking into account the period of hospitalization has awarded some amount. I do not find that, there is any need to cause

any interference in the amount so awarded. Though it was sought to be canvassed by Shri Patil, that once the tribunal has awarded the compensation towards pain and suffering no separate compensation was liable to be awarded under the head of loss of amenities, the contention so raised is liable to be rejected. The compensation, which has been awarded under the head of pain and suffering, is towards actual pain which was suffered by the respondent no.1 and the trauma which he has undergone during the said period, whereas the compensation as has been awarded by the Tribunal towards loss of amenities is with an object that, the respondent no.1 may not be henceforth able to enjoy the amenities of life as he was enjoying prior to meeting with an accident.

10. It is true that, tribunal has not made any discussion while awarding the amount of Rs.One Lakh towards loss of amenities, however, that cannot be the reason to disallow the claim on that count. It has to be kept in mind that, a person who did receive the permanent disablement to the extent of 30% and whose right leg has been shortened because of the accidental injuries may certainly not be able to enjoy amenities of life as he was enjoying prior to meeting with an accident. Though there is no evidence in this regard, it has to be presumed that many more activities may not be undertaken by the respondent no.1 after he has incurred such percentage of the disability. In such circumstances, it does not appear to me that the tribunal has committed any error in awarding a sum of Rs.One lakh towards loss of amenities.

11. However I find substance in the objection raised by the learned Counsel for the appellant that, after having determined the

total amount of compensation under the different heads payable to respondent no.1, the tribunal could not have added in it the amount of Rs.25000/- towards the NFL amount. In fact, after having determined amount of compensation under all the heads, there was a presumption that it includes the amount of NFL compensation. As such, to that extent, the award needs to be modified. For the reasons stated above, the following order is passed.

ORDER

1. It is held that, the respondent no.1 is entitled to the total compensation of Rs.8,00,091/- (Rs.Eight Lakhs Ninety One Only) inclusive of NFL compensation, jointly and severally from the owner and the insurer of the Canter involved in the alleged accident with interest thereon at the rate of 9% per annum from the date of application till its realization.

2. Appellant has deposited the amount of compensation in this Court as per the award of the Tribunal. The amounts to which respondent no.1 is held entitled by this Court, is permitted to be withdrawn by respondent no.1. Surplus amount, if any, be refunded to the appellant / Insurance Company with interest, if any, accrued thereon.

3. Appeal thus stands partly allowed in the aforesaid terms.

[P.R. BORA]
JUDGE