

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

FIRST APPEAL NO. 389 OF 2017

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
SHIVAJI AMBADAS BOBADE AND ANOTHER

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Advocate for Appellant : Mr. Ajit B. Kadethankar.

Advocate for Respondent No.1 : Mr. Bipinchandra K. Patil.

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CORAM : **V. K. JADHAV, J.**

DATE : 22nd February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad dated 24th December, 2012 in MACP No. 354 of 2010, original Respondent No.2 / Insurer has preferred this appeal on the ground that though the matter is remanded by this Court by order dated 27th March, 2012 in First Appeal (Stamp) No.32895 of 2011, the learned Member of the Tribunal has not given sufficient opportunity to the Respondent / Insurer to lead the evidence.

3 The learned counsel for the Appellant submits that the Respondent / Claimant met with an accident on 10th September, 2009

at about 10:00 pm. when he was travelling in an auto-rickshaw bearing registration No.MH-23-M-1330 on Paithan – Aurangabad road. On way, the said auto-rickshaw gave a dash to one two wheeler M-80 and turned turtled. In consequence of which, the Respondent / Claimant has sustained injuries, which resulted into permanent disablement to the extent of 20%. The Respondent / Claimant has approached the Tribunal initially by filing MACP No.354 of 2010 for grant of compensation under the various heads. Initially the learned Member of the Tribunal by judgment and award dated 14th July, 2011 awarded the compensation of Rs.2,70,879/- with interest @9% from the date of application till realization of the amount. The Appellant / Insurer had challenged the said award by preferring aforesaid First Appeal (Stamp) No.32895 of 2011 and this Court by order dated 27th March, 2012 remanded the matter to the Tribunal with directions to the Tribunal to allow the parties to lead evidence on the question of existence or non-existence of the valid and effective driving licence with the driver of the said auto-rickshaw and deliver the judgment afresh on merits. The learned counsel submits that the Tribunal, however, had not given sufficient opportunity to the Appellant / Insurer and by judgment and awarded dated 24th December, 2012 directed the Appellant and the Respondent / owner to pay an amount of Rs.2,09,492/- as

compensation jointly and severally to the Claimants along with with interest @9% per annum. The learned counsel submits that the Appellant / Insurer has raised a specific defence that the driver of the said auto-rickshaw involved in the accident was not having valid and effective driving licence to drive the said vehicle and therefore, there has been a breach of the terms and conditions of the policy.

4 This Court has remanded the matter only for the reason that before passing the initial judgment and award by the Tribunal, no sufficient opportunity was given to the Appellant / Insurer to substantiate its defence. The learned counsel submits that even in the second round of litigation, the Tribunal has not given sufficient opportunity to the Appellant / Insurer to lead evidence and to substantiate its defence.

5 The learned counsel for the Respondent / Claimant submits that in para 11 of the impugned judgment and award, the Tribunal has mentioned the dates and further observed that the Appellant and the Respondent / owner neither adduced their additional evidence or documentary evidence nor filed application for grant of time to adduce evidence. This Court in the aforesaid appeal has directed the Tribunal to dispose of the claim petition after remand

within a period of four months from the date of the order. The learned counsel submits that the Appellant / Insurer even thereafter, failed to adduce any evidence and the learned Member of the Motor Accident Claims Tribunal, Aurangabad has accordingly passed the award. The learned counsel for the Respondent / Claimant submits that even though in the earlier judgment the Tribunal has awarded Rs.25,000/- towards pains and sufferings, Rs.10,000/- towards future medical treatment and Rs.19,400/- towards special diet and attendant charges, in the later judgment without recording any reasons deleted the said heads and awarded the compensation. The learned counsel submits that even though the Respondent / Claimant has not preferred any appeal, this Court can look into the said aspect and award a just and reasonable compensation if the Claimant is entitled for the same.

6 On careful perusal of the impugned judgment and award most particularly para 11 of the judgment, it appears that though this Court by order dated 27th March, 2012 has directed the Tribunal to dispose of the claim petition within four months from the date of the order, the Tribunal has adjourned the case for evidence of Respondent Nos.1 and 2 (Respondent No.1 / owner and Appellant herein) in the months of July, August, September, October, November and December, 2012. The Appellant has not adduced any evidence nor

filed any application seeking time to adduce the evidence. I do not find any substance in this appeal. Even though sufficient opportunity is given to the Appellant / Insurer, the Appellant / Insurer has failed to adduced evidence to substantiate its defence before the Tribunal.

7 So far as the quantum of compensation is concerned, it appears that the Tribunal without recording any reasons deleted some part of the compensation awarded in the earlier judgment. The Tribunal has not awarded the compensation for pains and sufferings, future medical expenses and special diet and attendant charges during the period of hospitalization. In the earlier judgment the Tribunal has awarded Rs.25,000/- towards pains and sufferings, Rs.10,000/- towards future medical treatment and Rs.19,400/- towards special diet and attendant charges. Though the Claimant has not preferred any appeal or filed any cross-objection, the Respondent / Claimant is entitled for the said amount of Rs.54,400/- in total in addition to the award passed by the Tribunal. The impugned judgment and award requires modification to that effect. Hence, the following order:

ORDER

- I. The appeal, is hereby dismissed with costs.

- II. However, judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad dated 24th December, 2012 in MACP No. 354 of 2010, is hereby modified in the following manner:

“Both the Respondents jointly and severally do pay compensation of Rs.2,63,892/- (Rupees Two Lacs Sixty-Three Thousand Eight-Hundred and Ninety-Two only) to the Claimant alongwith interest @9% per annum from the date of application till realization of the entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn as per the modification as above.
- V. The appeal is accordingly disposed of.
- VI. Pending civil application stands disposed of.

[V. K. JADHAV, J.]