

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1049 OF 2012
WITH
CIVIL APPLICATION NO. 2129 OF 2012
IN
FIRST APPEAL NO. 1049 OF 2012**

Reliance General Insurance Company Limited ...Appellant

Versus

Shri.Jugalkishore Satyanarayan Mantri & Anr. ...Respondents

**WITH
CIVIL APPLICATION NO. 2197 OF 2017
IN
FIRST APPEAL NO. 1049 OF 2012**

Shri Jugalkishore Satynarayan Mantri ...Applicant

IN THE MATTER BETWEEN

Reliance General Insurance Co. Ltd. ...Appellant

Versus

Shri. Jugalkishore Satynarayan Mantri ...Respondent

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Mr.Nikhil Mehta i/b. KMC Legal Venture for the Appellant.
Ms. Leela D.Malu i/b.Leela D. Malu & Associates for the Applicant in
CAF No.2197 of 2017 and Respondent in FA No. 1049 of 2012.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : OCTOBER 10, 2017**

P.C.:

1. Admit. By consent of the parties, First Appeal is heard finally and decided at the stage of admission.
2. This Appeal is filed by the insurance company against the judgment and award dated 11.04.2012 passed by the learned Member, Motor Accident Claims Tribunal, Dadra & Nagar Haveli, Silvassa, in MACP No. 44 of 2011.
3. It is an injury claim of the claimant, who was 38 years old. At the time of accident, he was working as a Supervisor in one private firm by name Jay Bharat Road Lines, Vapi and he was earning income of Rs. 10,000/- p.m. On 18.04.2011, at about 6.45 p.m., the claimant was coming towards Silvassa from Vapi by riding on a motor cycle bearing registration no. DN-09-F-3895. He was riding the motor cycle in a moderate speed. When his motor cycle reached near Gurudwara, Chanod, a truck bearing registration no. TN-33-AM-2262 came from his back side in high speed. The driver of the truck was driving in rash and negligent manner and gave dash to the motor cycle. Due to dash given by the truck to the motor cycle, the claimant fell on the road and he sustained serious injuries. He was treated in the Haria hospital. He had undergone operation in the hospital for the fracture sustained to his left knee. His left leg has been amputated below thigh. He had filed

the claim petition, which was partly allowed by the tribunal and the tribunal awarded compensation of Rs. 9,48,000/- alongwith interest @ 7.5% p.a. from the date of petition till its realization. Hence, this Appeal.

4. Learned counsel for the appellant/ insurance company has submitted that the learned Member, tribunal has failed to appreciate the evidence mainly on the point of quantum. He has further submitted that the learned Member, tribunal ought not to have accepted the evidence of the claimant that he was drawing salary of Rs. 10,000/- p.m. He has further submitted that the claimant has not produced any documentary proof to corroborate the evidence of his earning. If the claimant income is accepted as Rs. 10,000/-, then income tax ought to have been deducted from his income. He has further submitted that the learned Member, tribunal should have been fixed the income notionally in the absence of the documentary evidence.

5. Learned counsel for the claimant/respondent while opposing this Appeal, has supported the judgment and award passed by the tribunal. She has submitted that the insurance company did not lead any evidence.

6. Heard submissions. Perused the impugned judgment and award and the documents on the record placed before this Court. In the claim application, the claimant has deposed that he met with an accident on 18.04.2011 when he was riding the motor cycle. Due to dash given by the truck he fell down. He was sustained severe injuries. He was admitted in the hospital from 18.04.2011 to 24.04.2011. Due to fracture, he lost his left leg below thigh and the driver of the truck was rash and negligent in driving. On the point of income, he has stated that he was serving as a Supervisor in Jay Bharat Road Lines, Vapi at the time of accident, which is a partnership firm, and he was drawing salary of Rs. 10,000/- p.m. He has produced salary certificate, which is marked at Exhibit 110. He has also examined Mr. Hanif Meman- PW-3, the employer of Jai Bharat Road Lines and he has confirmed that the claimant was working in Jai Bharat Road Lines as a Supervisor and was drawing salary of Rs. 10,000/- p.m. He has also deposed that an additional amount of Rs. 5500/- was paid to the claimant towards house rent and conveyance. The learned Member, tribunal has assessed the claimant evidence properly. He has rejected the claim of additional amount of Rs. 5,500/- towards house rent and conveyance, but has rightly fixed his salary Rs. 10,000/- p.m. The submission of the learned counsel for the insurance company that the learned Member, tribunal ought to have been fixed the salary notionally, which cannot be

accepted when the claimant has positively produced the evidence of his salary certificate.

7. The tribunal has also discussed the evidence in respect of pecuniary damages and also special damages i.e. the expenses towards medical treatment, pain and suffering for the loss of one leg. I am of the view that the amount of compensation awarded by the tribunal is just and adequate and there is no need to interfere with the judgment and award dated 11.04.2012 passed by the learned Member, Motor Accident Claims Tribunal, Dadra & Nagar Haveli, Silvassa and hence, the appeal fails. Appeal is accordingly dismissed.

8. In view of the dismissal of the appeal, Civil Application No. 2197 of 2017 filed for withdrawal by the claimant is allowed. Further, the statutory amount of Rs.25,000/- which was deposited in this Court at the time of filing of this appeal, shall be transferred to the Motor Accident Claims Tribunal, Dadra and Nagar Haveli, Silvassa and the same shall also be allowed to be withdrawn by the claimants.

9. In view of the dismissal of the Appeal, Civil Application No. 2129 of 2012 also stands disposed of.

(MRIDULA BHATKAR, J.)