IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.647 OF 2013
WITH
CIVIL APPLICATION NO.1178 OF 2013
IN
FIRST APPEAL NO.647 OF 2013

Bajaj Allianz general Insurance Co.Ltd. …Appellant
Versus
Miss.Inchanany Nuymph Jose anr. …Respondents

Mr.M.Sathaye for Appellant.
Mr.Anil Kadam for Respondent No.1.
Ms.Vinita Kurian i/b A.M.Gokhale for Respondent No.2 for Applicant in CAF No.3073 of 2014.

CORAM: S.C.GUPTE,J
DATED: 11 April, 2017

PC:-

1. Heard learned Counsel for the parties.

2. This First Appeal challenges a judgement and order passed by the Motor Accident claim Tribunal, Mumbai on an application of the Applicant, who has been a victim of a motor accident. On 22 May 2005, when the Applicant was returning to her office in a car with her colleague, the car met with an accident and turned turtle. The Applicant sustained severe injuries because of the impact of the accident, which include fracture of spine as also of the 3rd and 4th rib. Due to these injuries, Applicant became paraplegic, she was required to incur substantiate amount towards her treatment as also special conveyance and diet. She also suffered loss of income, loss of prospective income and loss of amenities of life because of these injuries. The Applicant claimed a compensation of Rs.40,00,000/- from the owner and insurer. Whereas the owner did not come forward to defend the claim, the insurer resisted the claim by filing written statement. It was proved before MACT that the Applicant had sustained injuries in the car accident due to rash and negligent driving of the car. The plea of the insurer that the vehicle was driven by a driver without a valid licence was turned down by the Trial Court. The Trial Court granted compensation to the Applicant under various heads, which include treatment expenses, conveyance, special diet, loss of income, pain and suffering, loss of prospective income, loss of amenities of life, future treatment and gratuitous services. The Trial Court awarded a total compensation of Rs.30,79,526/- along with interest @ 9.25 percent per annum from the day of filing of the application till its realisation.

3. There is a civil application taken out by the owner of the vehicle, being Civil Application No.3073 of 2014. By this Civil Application, the owner seeks an order for leading of additional evidence in the First Appeal. The owner never contested the Respondents' Application before MACT and did not file any written statement. At this belated stage, the owner cannot be allowed to lead additional evidence. The application is, accordingly, rejected.

4. Learned Counsel for the Appellant/Insurer advanced various submissions pertaining to the different heads of items under which compensation has been awarded to the Applicant. As far as the heads, other than loss of prospective income, are concerned, I do not see much merit in any of the contentions of the Appellant. The treatment expenses as well as conveyance and special diet claims of the Applicants are more or less based on actuals and do not call for any interference in the First Appeal. Same goes for the items such as pain and suffering, loss of amenities of life. These are anyway to be based on ball-park figures and cannot be a matter of precise estimation. Considering the situation of the Applicant (the Applicant was working in insurance related firm having regular income, which is duly reflected in income tax returns filed by her from time to time) and also considering the fact that she had to suffer paraplegia for the rest of her life at a young age, awards towards pain and suffering as well as loss of amenities of life are pre-eminently reasonable. So also, the items of future treatment and gratuitous services awarded by the Trial Court respectively in the sum of Rs.75,000/- and Rs.50,000/- are pre-eminently reasonable and need not be disturbed by this Court.

5. The main controversy in the First Appeal pertains to loss of future income which is estimated at Rs.19,44,000/-. It is submitted by learned Counsel for the Appellant that despite the fact that returns of income filed by the Applicant were on record, which showed her annual income in the range of Rs.1,40,000/-, the Trial Court has arbitrarily computed a sum of Rs.2,10,000/- p.a as her income. There is some merit in this submission. The estimation of income at the rate of Rs.2,10,000/- per annum in the face of these income tax returns does not stand the scrutiny of the Court. If the annual income is to be reckoned at Rs.1,40,000/- instead of Rs.2,10,000/- per annum, the figure awarded towards loss of prospective income comes to about two-third of the amount awarded under this head. Learned Counsel for Respondent No.1 (Applicant in the MACP application) is agreeable to this reduction. Considering the fact that the accident occurred as far back as in the year 2005 and that so far, the Applicant has had monitory compensation of only Rs.5,00,000/-, this Court is of the view that it would be in the interest of justice to accept the overall compensation, subject to reduction referred to above in the item of loss of prospective income.

6. Accordingly, the First Appeal is partly allowed by reducing the amount of Rs.19,44,000/- to Rs.12,94,000/- shown in para 20 of the impugned judgement and order making up the total compensation of Rs.24,29,526/- . The figure of Rs.30,79,526/- in the impugned judgement and order of MACT, Mumbai shall, accordingly, stand substituted by the figure Rs.24,29,526/-. Rest of the order is confirmed. The Applicant has deposited a sum of Rs.45,45,000/- before MACT, Mumbai. That amount has since been invested by MACT. The amount lying in this Court towards the statutory deposit of Rs. 25,000/- along with accrued interest, if any, shall be transferred by the Registrar to MACT, Mumbai. The legal heirs of the Applicant, who are brought on record as Respondent No.1A-1B, will be entitled to withdraw the decretal amount as modified by this court alongwith the awarded interest from out of the amount deposited by the

Appellant in MACT, Mumbai as well as this Court and accrued interest thereon, after adjusting the sum of Rs. 5 lacks already withdrawn by the Applicant towards the decretal dues. The remaining amount shall be refunded to the Appellant. In view of the disposal of the Appeal, Civil Application No.1178 of 2013 does not survive and the same is also disposed of.

(S.C.GUPTE,J)