

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

**FIRST APPEAL NO.254 OF 2017
WITH
CIVIL APPLICATION NO.832 OF 2017**

IFCO TOKIO General Insurance Co. Ltd. ... Appellant/Applicant
Versus

Sou Neelam Bharatsing Thakur And
Others ... Respondents

.....

Ms. Shalini Shankar for the Appellant/Applicant.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. This First Appeal challenges an order passed by Motor Accident Claims Tribunal, Raigad-Alibag on an accident claim petition.

2 On 21 April 2011, Respondent No.1 (original Applicant), while walking on the road opposite her house in Panvel city, was knocked down by the insured vehicle, namely, Motorcycle bearing No.MH-06/AV-9323. The Applicant sustained fracture injuries on her right knee, ankle and also injuries all over her body in the accident. She was treated as an indoor patient in a hospital during 21/04/2011 to 28/04/2011. As a result of her injuries, the Applicant was unable to do her daily household work and had to keep a maid servant on a monthly salary of Rs.2,500/-. The Applicant was 45 years' old at the time of the accident. She prayed for compensation of Rs.2,50,000/- with interest from the owner and the insurance company

(the owner being Respondent No.2, and the insurer the Appellant in the First Appeal). The factum of accident due to rash and negligent driving by the driver of the insured motorcycle was duly proved before the Trial Court; so also, grievous injuries suffered by the Applicant resulting into a permanent disability. A medical practitioner was examined to prove the nature and percentage of the disability. The doctor deposed to the spinal injury of the Applicant leading to 25% permanent disability. As regards the issue of compensation, the Trial Court observed that the Applicant was a married housewife and accordingly, must be dealt with as having various household duties which might not have any monetary value. Considering, however, the engagement of a maid servant for next five years on account of the Applicant's inability to do household work, the Court awarded a lumpsum compensation. This compensation was awarded under different heads, such as compensation towards engagement of maid servant for five years at Rs.1,00,000/-, conveyance, diet and attendance estimated at Rs.15,000/- (Rs.5,000/- each), pain and suffering for two fractures Rs.30,000/- (Rs.15,000/- for each fracture), future medical treatment Rs.25,000/- in addition to medical treatment bills and medicine bills aggregating to Rs.80,000/-. On this compensation, interest at the rate of 4% was awarded.

3 Learned Counsel for the Appellant submits that the driver of the insured vehicle, one Mulla, was not joined as a party respondent to the claim petition. It is submitted that the driver did not have a valid driving licence. The impugned order does not reflect that any plea of non-joinder of the driver as a necessary party was pressed before the Trial Court. As regards the plea concerning want of a valid driving licence, there is nothing

placed on record in this behalf by the Appellant insurer. The onus to prove that the vehicle was driven in breach of terms of the insurance policy, including holding of a valid driving licence by the driver of the vehicle, is upon the insurer. There was no material placed before the Trial Court to discharge that onus. The plea, accordingly, has no substance.

4 Learned Counsel for the Appellant also challenges the quantum of the compensation fixed by the Trial Court. The heads of compensation, in my considered opinion, were correctly considered by the Court. Being a married lady and housewife suffering from 25% permanent disability and thereby having to engage household help, the estimate of Rs.1,00,000/- towards engagement of a maid servant for next five years cannot be faulted as unreasonable or excessive. The compensation awarded under the other heads also appears to be pre-eminently reasonable, and does not call for any interference by the Appeal Court.

5 In the premises, there is no merit in the First Appeal. The First Appeal is dismissed. No order as to costs.

6 In view of the dismissal of the First Appeal, Civil Application No.832 of 2017 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)