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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.815 OF 2013
ALONGWITH
CROSS EXAMINATION (ST) NO. 35880 OF 2017

United India Insurance Co.Ltd. ... Appellant.

V/s.

Bhagwan Waman Jadhav and anr ... Respondents

Mr. Ketan Joshi, for the appellant.
Mr. Srikrishna Ganbawale i/by Sangramsingh Yadav, for respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This appeal is preferred by the Insurance Company, challenging the order dated 26.2.2013, passed by Motor Accident Claims Tribunal, Satara, in M.A.C.P. No.151 of 2008, on the ground that the amount of compensation awarded by the Tribunal is excessive; whereas Cross Objection is preferred by the respondent No.1 claimant, contending that the amount awarded by the Tribunal as compensation is not sufficient considering the injuries suffered by the respondent No.1 and also having regard to the fact that he is undergoing further medical treatment that is operation of changing of hip ball.

3] The perusal of the judgment passed by the Tribunal shows that respondent is an agriculturist and cultivating crops like turmeric and ginger. On account of the injuries sustained in the accident, he is suffering 30% permanent disability. There is disablement certificate produced on record to that effect at Exh.77. As a result of said disability, the movement of his hip and knee is restricted and it has also resulted in to loss of his earning capacity. The Tribunal, has therefore, awarded the compensation towards loss of his earning capacity at the rate of 30%. The Tribunal, has considered the income of the injured at Rs.2,50,000/-per annum; and deducted therefrom the amount of Rs.75,000/-, towards the above loss of his earning. Thereafter considering the age of the claimant to be 53 years, at the time of accident and applying the multiplier of “11” years, the Tribunal has granted amount of Rs.8,25,000/- towards loss of income.

4] Learned counsel for the appellant submits that the loss of income which the Tribunal has considered is on higher side. However, in the opinion of this Court, considering the injuries sustained by the claimant and having regard to the fact that he is an agriculturist and cultivating cash crops like ginger and turmeric, it cannot be said, in any way, that the said income is on higher side. Hence as regards the the appeal preferred by the Insurance Company, I do not find that any interference is warranted in the amount of compensation awarded by the Tribunal. The Appeal, therefore, stands dismissed.

5] However, as regards the Cross Objections, learned counsel for respondent claimant has brought to the notice of this Court, the Cross Examination of respondent which shows that on account of this disability, respondent cannot sit like normal person in cross legged position. Further it is also brought on record that he can supervise the family operations, but cannot stand and walk for long hours. Moreover, as the life of hip ball which is installed in his leg ranges from 5 to 12 years and 8 to 10 years, normally, if the hip ball is of imported make, it is required to be replaced now, then it will incur the cost of Rs.2,00,000/-.

6] In view of this evidence brought on record, in my considered opinion, for the replacement of hip ball, respondent definitely needs some compensation to be awarded under the head of future medical expenses. The amount of Rs.2,00,000/- towards same is just and reasonable. Hence to that extent, the Cross Objection needs to be allowed, granting him additional amount of Rs.2,00,000/- over and above the amount of compensation as awarded by the Tribunal, with interest on the additional amount at the rate of 6% per annum from the date of this order. The Cross Objection is allowed.

7] The First Appeal and Cross objections are accordingly disposed off in above terms.

8] In view of of disposal of Appeal and the Cross Objection, the bank guarantee furnished by respondent stands discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]