IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.480 OF 2019

The Reliance General Insurance Company,
Through its Branch Manager,
Office at Ujwal Enterprises, Airport Road,
Nanded, Tq. & Dist. Nanded.

The Reliance General Insurance Company,
Through its Authorized Signatory/Manager,
Office at Opposite District Court New Building,
2nd Floor, Aurangabad Business Center,
Adalat Road, Aurangabad, Dist. Aurangabad.

… **Appellant**.

… **Versus** ...

1 Datta Namdeo Darade,
Age 30 yrs., Occ. Driver,
R/o Nanded, Dist. Nanded.

2 Padmakar Pralhadrao Parsewar,
Age : Major, Occ. Business and owner of truck,
R/o New Mondha, Near Ujwal Gas,
Nanded, Tq. & Dist. Nanded.

… **Respondents**.

...

Mr. S.C. Chapalgaonkar, Advocate for the appellant

Mr. S.H. Panchal, Advocate for the respondent No.1

Mr. A.A. Mukhedkar, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18th JUNE, 2019

<u>JUDGMENT</u> :

1 Present appeal has been filed by the insurance company-original respondent No.2 challenging the Judgment and Award passed in Motor Accident Claim Petition No.5/2013 by learned District Judge-6 and Ex-officio Member of Motor Accident Claims Tribunal, Nanded dated 09.10.2018.

2 Present respondent No.1 is the original claimant who had filed petition under Section 166 of Motor Vehicles Act seeking total compensation of Rs.25,00,000/- from original respondents for the injuries sustained by him in an accident. It was contended that the claimant was driving truck on 26.01.2012. Thereafter, he stopped the truck, alighted and crossed the road. After finishing all the work across the road he was returning by walk towards his truck, which he had parked by the side of Nanded-Waranga road on 26.01.2012. At that time, a truck bearing No.MH 26/H-7631 came from Nanded side in high speed and gave dash to him. As a result of which, he sustained grievous injuries. Offence was registered against the said truck driver. The said accident taken place due to the negligence on the part of said driver. The original claimant contended that he was aged 25 at that time and was serving as driver. He was earning Rs.10,000/- per month. Due to

the said accidental injuries he was admitted to Government Hospital, Nanded and took treatment, however, his right leg above knee was required to be amputed. As a result of which, he has sustained permanent disability and therefore, he has claimed the compensation. Respondent No.1 is the owner of the offending truck and the truck was insured with original respondent No.2 on the date of accident.

3 Respondent Nos.1 and 2 had filed separate written statement. They denied all the contentions in the petition. It was denied that the said accident taken place due to the negligence on the part of driver of truck owned by respondent No.1 and insured with respondent No.2. It is denied that the claimant has sustained permanent injury due to the accident. The insurance company has taken statutory defences also.

4 Taking into consideration the rival contentions, issues were framed. Claimant alone has led oral evidence as well as documentary evidence. There is no evidence adduced by respondent Nos.1 and 2. Taking into consideration the said evidence on record the petition was partly allowed. Both the respondents were directed to pay compensation of Rs.15,56,800/- together with interest @ 9% per annum from the date of the petition till actual realization of the entire amount, jointly and severally. This award is challenged by the insurance company in this appeal.

5 Heard learned Advocate Mr. S.G. Chapalgaonkar for appellant, learned Advocate Mr. S.H. Panchal for respondent No.1 and learned Advocate Mr. A.A. Mukhedkar for respondent No.2.

6 It has been vehemently submitted on behalf of the appellant that the learned Tribunal has failed to consider the point of permanent disability. The certificate of disability which was proved (Exh.43) was showing that he has sustained 80% of permanent disability. However, the learned Tribunal has held that he has sustained 100% loss of income because of the same. Another fact, that is also not considered is that the evidence of the claimant that he was earning Rs.10,000/- per month as driver has been taken as not proved but then considered his income as Rs.7,000/- per month in absence of documentary evidence. It ought to have been equivalent to the notional income and ought to have been considered as Rs.6,000/- per month.

7 Per contra, the learned Advocate appearing for the respondent No.1-original claimant supported the reasons given by the learned Tribunal.

8 It will not be out of place to mention here that though the insurance company had taken statutory defence and specific issue to that effect regarding breach of permission of policy was framed, it appears that it is not a ground for appeal. Further, no evidence was led by the insurance company to prove the breach and therefore, the learned Tribunal had

answered the said issue in negative. Further, as regards the rash and negligence of the part of driver of truck bearing No.MH 26/H-7631 is concerned, no contrary evidence has been produced by the respondent and therefore, those points are not required to be considered in this appeal. The only point that has been canvassed is in respect of quantum of compensation and accordingly following point is arising for my determination and the findings and reasons on the same are as follows.

> Whether the learned Tribunal has computed the compensation properly and legally ?

R E A S O N S

9 As regards proof of permanent disability is concerned, apart from his own evidence the claimant has examined PW 3 Dr. Rajesh Ambulgekar. The disability certificate is at Exh.43. Therefore, taking into consideration the fact that right leg above knee of the claimant was amputed. It was certified that he had sustained 80% of permanent disability. The said disability is taken as 100% loss to the original claimant. In fact, the said assessment by the learned Tribunal is correct assessment. Claimant was serving as driver and under such circumstance, when his right leg above knee was required to be amputed due to the accidental injuries, he has lost the job

as driver. He has been permanently incapacitated from getting similar job in future and therefore, it is definitely 100% loss of income for him.

10 Though the claimant had contended that he was getting amount of Rs.10,000/- per month and had examined the wife of his employer, yet the learned Tribunal has taken his income @ Rs.7,000/- per month in absence of cogent evidence about salary of the claimant. Taking into consideration the occupation that has been proved the learned Tribunal was justified in arriving at a conclusion that claimant was capable of getting income of Rs.7,000/- per month. In fact, if we consider the chart of computation given in para No.18, it can been seen that there is no computation under the head of future prospect and now the original claimant has not preferred any appeal seeking enhancement in the compensation. Under such circumstance, whatever the compensation has been awarded to the claimant is just and reasonable. The point is, therefore, answered in the affirmative. No interference is required at the hands of this Court in the First Appeal. Hence, the appeal is dismissed with costs.

(Smt. Vibha Kankanwadi, J.)

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