IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1478 OF 2015
WITH
CIVIL APPLICATION NO.2831 OF 2015
IN FA/1478/2015

M/s Shriram General Insurance Company Ltd.,
10003 E-8 RIICO Industrial Area, Sitapura,
Jaipur 302022 (Raj) through it's Manager (Legal)
Through its Branch Manager, Jalna Road,
Opposite S.F.S. School, Aurangabad.

… **Appellant**.

… **Versus** …

1 Ajaj Khan Aman Khan Pathan,
Age 20 yrs., Occ. Nil,
R/o Hussain Nagar,
Beed Bypass road, Aurangabad.

2 Vasant Prabhu Dhakane,
Age : major, Occ. Business,
R/o Mahar Chikkana, Tq. Lonar,
Dist. Buldana.

3 Vilas Prabhu Dhakane,
Age : major, Occ. Driver,
R/o Pimpri Khandare, Tq. Lonar,
Dist. Buldana.

… **Respondents**.

...

Mr. V.N. Upadhye, Advocate for the appellant

Mr. G.R. Syed, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23rd SEPTEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent No.3-insurance company challenging the Judgment and Award passed by Chairman, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.146/2012 dated 16.10.2014, thereby the claim petition under Section 166 of the Motor Vehicles Act, 1988 came to be allowed against it.

2 The present respondent No.1-original claimant had filed the said claim petition for getting compensation in respect of the accidental injuries sustained by him. The said accident had taken place at about 3.30 p.m. on 23.01.2012 near Tirupati Ginning on Sindkhedraja to Mehkar road. The claimant was proceeding on motorcycle. When he came near the spot of accident, a truck bearing registration No.MH 20/AA-8021 came in high speed and gave dash to the motorcycle driven by the claimant. The truck driver i.e. respondent No.2 was prosecuted by police. The said truck was owned by respondent No.1 and it was insured with respondent No.3, on the date of the accident. It was submitted by the claimant, that though he has taken treatment, yet, due to the accident, since his right leg was required to be

amputed, he has suffered permanent physical disability. He was an electrician getting Rs.5,000/- per month. Now, he is unable to do any work. Hence, compensation of Rs.7,00,000/- was claimed together with interest.

3 All the respondents have filed separate written statement, however, the tenor of the same is denial of all the averments in the petition. They all have denied the allegations made against respondent No.2. They have denied age, occupation and income of the claimant. They also denied that claimant has sustained permanent physical disability. The insurance company has come with a case, that there was contributory negligence on the part of the motorcyclist. Therefore, the owner and insurance company of the motorcycle were necessary party. The other statutory defence has also been taken.

4 After the issues were framed, it appears that only claimant has led oral as well as documentary evidence. Respondents preferred not to lead any evidence. Taking into consideration the evidence led by the petitioner, the said petition was partly allowed. Respondent Nos.1 and 3 were jointly and severally directed to pay compensation of Rs.5,27,800/- together with interest @ 9% per annum from the date of framing of the issues till actual realization of the amount. This Award is challenged by the insurance company, in this appeal.

5 Heard learned Advocate Mr. V.N. Upadhye for the appellant and learned Advocate Mr. G.R. Syed for respondent No.1. Respondent Nos.2 and 3 though served, failed to appear.

6 It has been vehemently submitted on behalf of the appellant-insurance company that the learned Tribunal has not appreciated the evidence properly. The point of negligence has not been considered. The evidence in the form of First Information Report and spot panchnama was clearly established that the motorcyclist was alone negligent. He had not taken care and dashed against the truck, when it was in the middle of the road. Alternatively, the Tribunal ought to have considered, that there was a contributory negligence, on the part of the petitioner. So also, the quantum of the compensation has not been properly assessed.

7 Per contra, the learned Advocate appearing for the respondent No.1-original claimant supported the reasons given by the Tribunal. It was submitted that no evidence was led by the respondents and therefore, the Tribunal has correctly raised adverse inference against respondent No.2. The quantum has also been properly calculated.

8 At the outset, it can be seen, that the claimant has examined himself and he has produced the First Information Report, spot panchnama

and other police papers. He was cross-examined on behalf of the insurance company. However, there is absolutely no reference to the certified copies of the First Information Report, spot panchnama. There is only a single sentence suggestion, that the accident took place due to his own fault, which has been denied by the claimant. No doubt, it is to be noted that the spot panchnama, especially, the rough sketch appended to the same shows that the truck was proceeding from its right side and the motorcycle is lying ahead of it. It was not tried to be extracted, as to from which direction the motorcycle was proceeding and from where the truck was proceeding. If the First Information Report is perused, then it appears that the truck had come from opposite direction. The spot of the accident is shown by a different person than the claimant. If we consider the First Information Report, it has been lodged by one Shaikh Muktar Shaikh Ajij of village Kingaonraja. The present claimant is resident of Aurangabad and the said informant has stated, that when he was standing near the Hospital of one Dr. Jaybhay, at that time, he found that the claimant was admitted. He says, that claimant is his maternal uncle and after the claimant had narrated the incident to him, he had lodged the report. According to the claimant, the accident had taken place at 3.30 p.m. on 23.01.2012 and the panchnama of the spot is stated to have been prepared between 17.15 to 17.45 hours. There is no evidence on record, that the said situation, which was at the spot immediately after the accident, was preserved till the spot panchnama was executed. Therefore, we cannot rely on the contents of the spot panchnama, for holding that claimant was negligent. In fact, when the claimant had specifically told that the accident had taken place due to the negligence on the part of the truck driver i.e. respondent No.2 and the respondent No.2 did not cross-examine him and further except suggestion, there was nothing in the cross, taken by the insurance company. The learned Trial Court was correct in drawing adverse inference against respondent No.2. There was no hurdle for respondent No.2 to himself enter into the witness box or for the insurance company to examine him, on the basis of the contents of the First Information Report. Even for the contributory negligence, no evidence has been led by the insurance company. Therefore, the point of negligence has been correctly appreciated by the Tribunal.

9 As regards the quantum of compensation is concerned, it is also correctly considered. Though the claimant had contended that he was earning of Rs.5,000/- per month by working as an electrician, yet he could not produce anything. Therefore, his income is taken @ Rs.3,000/- per month i.e. notional income. Further, taking into consideration his age, appropriate multiplier has been used. Further, there is amputation of his right leg, and therefore, taking into consideration the disability, the Award

has been passed and the learned Advocate appearing for the respondent No.1-claimant has stated that the amount is properly awarded. Under such circumstance, no interference is required. Hence, following order.

ORDER

1 The First Appeal is hereby dismissed with costs.

2 The amount deposited, if any, be given to the claimant.

3 Civil Application No.2831 of 2015 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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