IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

FIRST APPEAL NO.829 OF 2004

The New India Assurance Co. Ltd.
Through its Authorised Signatory
Hiralal s/o Namdeo Vispute
Age : 49 yrs, Occu : Asstt. Manager,
Aurangabad .. **Appellant**
(Orig. Respt. No.2)

Versus

1. Mr Balasaheb Abaji Dhus
Age : 34 yrs, Occu : Service (Truck Driver)
R/o. Deolali Pravara, Tq. Rahuri,
Dist. Ahmednagar .. Orig. Applicant

2. Shri Dnyaneshwar Shankarrao Patil
Age : 23 years, Occu : Transport, ..(Orig. Respdt No.1)
R/o. Belapur Kd., Bhagat Vasti, Shrirampur,
Dist. Ahmednagar (Owner & Driver of Jeep
No.MH-17-C-9832)
.. **Respondents**

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Advocate for Appellant : Shri Dhananjay Deshpande
Advocate for Respondent No.1 : Shri N.C. Garud
Respondent No.2 : Served.

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CORAM : P.R. BORA, J.
Dated: February 27, 2019

ORAL JUDGMENT :

1. The Insurance Company has preferred the present appeal against the Judgment and Award passed by the Motor Accident Claims Tribunal at Ahmednagar in Motor Accident Claim Petition No.254 of 2002 decided on 09.03.2004.

2. The present respondent no.1 had preferred the aforesaid petition claiming compensation on account of injuries caused to him in the vehicular accident happened on 08.02.2002 having involvement of a jeep bearing Registration no.MH-17-C-9832 owned by present Respondent No.2 and insured with the appellant – Insurance Company. It was the contention of respondent no.1, who is hereinafter referred to as the claimant, that when he was proceeding on his motorcycle, his motorcycle was dashed by the offending jeep and in the accident so happened, he suffered severe injuries and was required to undergo long treatment and was also subjected to incur huge expenses. According to the claimant, the accident in question had happened because of the sole negligence on part of the driver of the jeep. It was also the contention of the claimant that, he has incurred 70% permanent disability because of the injuries caused to him in the alleged accident.

3. As per the case of the claimant, he was working as a driver at the relevant time and was earning around Rs.4,500/-

per month. His age was stated to be 35 years in the claim petition. The compensation was claimed of Rs.6,00,000/-. After having assessed the oral and documentary evidence on record, learned Tribunal held the claimant entitled for the total compensation of Rs.5,90,000/-. Aggrieved by, the Insurance Company has preferred the present appeal.

4. Shri Deshpande, learned Counsel appearing for the appellant – Insurance Company invited my attention to the bifurcation of the amount of compensation awarded by the Tribunal, which is there in para-17 of the impugned Judgment. Referring to the amounts as has been awarded by the Tribunal, the learned Counsel submitted that, it is apparent that, the amount of Rs.1,40,000/- as has been awarded by the Tribunal towards permanent disability and a sum of Rs.40,000/- towards pain and suffering are in fact included in the amount of Rs.2,70,000/-. The learned Counsel submitted that, the Tribunal has thus twice awarded the amount under the same head. The learned Counsel submitted that, to the aforesaid extent, the impugned Judgment and Award needs to be modified.

5. The submissions so made on behalf of the appellant – Insurance Company is resisted by Shri Garud, learned Counsel appearing for the claimant. Inviting my attention to the discussion made by the Tribunal in para-15 of the Judgment, the learned Counsel submitted that, the amount as has been awarded by the Tribunal is just and proper and no interference is required in the amount of compensation so offered. The learned Counsel further submitted that, in fact the Tribunal has held the income of the claimant only to the extent of Rs.1500/- though it was the assertion of the claimant that, he was earning around Rs.4500/- per month from the job of driver, which he was performing before occurrence of the alleged accident. The learned Counsel, in the circumstances, prayed for dismissal of the appeal.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned Judgment and the evidence on record. At the beginning itself, it was clarified by Shri Deshpande that, the

factum of occurrence of accident and negligence etc., are not disputed by the appellant – Insurance Company. The impugned Judgment is challenged by the appellant – Insurance Company mainly on the ground that, the Tribunal has twice awarded the compensation under the same heads, which was impermissible. As noted herein above, the learned Counsel for respondent no.1 - claimant has resisted the contentions raised on behalf of the appellant – Insurance Company. I deem it appropriate to reproduce the bifurcation of the amount of compensation as has been made by the Tribunal in para-17 of its Judgment, which is thus :

> "17. Considering all the facts and evidence on record, the applicant is entitled compensation as under :-

Rs. Ps.		
1,40,000=00	:	Towards permanent disability
2,70,000=00	:	Towards dis-comfort, loss of enjoyment of life and shortening of life.
5,000=00	:	Towards traveling and conveyance expenses.
40,000=00	:	Towards pains and suffering during treatment.
1,35,000=00	:	Towards medical expenses
5,90,000=00	:	Total compensation."

7. On perusal of the bifurcation made of the amount of

compensation by the Tribunal, apparently, it does not appear to me that, any interference is required in the amount of compensation so awarded by the Tribunal. It is not in dispute that, the claimant had incurred 70% permanent disablement because of the injuries caused to him in the alleged accident. Sufficient evidence is brought on record by the claimant to prove the said fact. Medical Officer was examined and it has come in his evidence that, claimant's right leg below knee was required to be amputed. Considering the fact that, his right leg below knee has been amputed, it is evident that, the claimant may not be able to serve as a driver in future. Considering the facts as aforesaid, the amount of Rs.1,40,000/- awarded by the Tribunal towards permanent disablement, amount of Rs.2,70,000/- towards discomfort, loss of enjoyment of life and shortening of life, as well as Rs.40,000/- towards pain and suffering, appears to have been correctly awarded by the Tribunal. There is no substance in the allegation raised by the Insurance Company that, the amount of compensation awarded by the Tribunal is exorbitant or that, the Tribunal has awarded the amount twice under one head.

8. After having considered the entire material on record, I see no merits in the appeal filed by the Insurance Company. In the result, the following order is passed.

ORDER

(i) The appeal is dismissed.

(ii) The claimant is permitted to withdraw the amount deposited by the appellant - Insurance Company in this Court along with the interest accrued thereon.

(iii) Pending Civil Application, if any, stands disposed of.

(**P.R. BORA, J.**)