IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

49 FIRST APPEAL NO.2754 OF 2018
WITH
CA/11658/2018 IN FA/2754/2018

. The New India Assurance Company Ltd.,
Through its Branch Manager,
Branch at Yeshodeep Building,
Shivaji Road, Parbhani, Dist.Parbhani.

The New India Assurance Company Limited,
Through it's Authorized Signatory /
Senior Divisional Manager /
In – charge Legal Hub, Mahesh Compound,
Adalat Road, Aurangabad. ..Appellant
(Org. Respdt.No.2)

VERSUS

1) Vikki S/o Bhiv Sarwade
Age: 24 years, Occu.: Education / Labour,
R/o. Lahuji Nagar, Parbhani,
Dist.Parbhani.

2) Vithal S/o Gangadhar Wadje
Age: 45 years, Occu.: Business,
R/o. Kallali, Post.Rji,
Ta.Kandhar, Dist.Nanded. ..Respondents
(Respdt.No.1 – Orig. Claimant
Respdt.No.2 – Orig. Respdt.No.1)

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Advocate for Appellant : Shri Mohit R. Deshmukh
Advocate for Respondent No.1 : Shri P. C. Mayure
Respondent No.2 exempted as per Court's
order dated 19.09.2018.

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CORAM : P.R.BORA, J.

DATE: 14th January, 2019

ORAL JUDGMENT:-

1 The appellant Insurance Company has filed the present appeal challenging the Judgment and order passed by the Motor Accident Claims Tribunal at Parbhani in Motor Accident Claim Petition No.291 of 2014 decided on 15.11.2017.

2 Present respondent No.1 had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him in a vehicular accident happened on 18.01.2014 having involvement of a Tipper Truck bearing registration No.MH-26 AD-227 owned by present respondent No.2 and insured with the appellant Insurance Company. It was the contention of the respondent No.1 (hereinafter referred to as the claimant) that the alleged accident happened because of sole negligence on part of the driver of the offending Tipper Truck. As is revealing from the material on record, claimant was proceeding on foot and was dashed by the offending Tipper Truck. It was the contention of the claimant that because of the injuries caused to him in the alleged accident, he has incurred 50% permanent disability and was subjected to incur huge expenses on his treatment. The claimant had, therefore, claimed the compensation of Rs.33,75,000/- from the owner and insurer of the offending Tipper Truck. The petition was resisted by the appellant

Insurance Company on various grounds. The learned Tribunal, after having assessed the evidence brought on record by the parties, held the claimant entitled for the total compensation of Rs.11,45,701/-. Aggrieved thereby, the Insurance Company has preferred the present appeal.

3 Shri M.R.Deshmukh, learned Counsel for the appellant Insurance Company submitted that the Tribunal while computing the compensation has considered the notional income of the claimant without any income proof to the tune of Rs.6,000/- per month. The learned Counsel submitted that no evidence was adduced by the claimant as to what type of work he was doing at the relevant time nor the claimant has provided the particulars regarding the employment and the income from the said employment. The learned Counsel further brought to my notice that it was infact the case of the claimant that he was taking the education. In the circumstances, according to the learned Counsel, the Tribunal has committed an error in holding the notional income of the claimant to the tune of Rs.6,000/- per month for assessing the amount of compensation.

4 The learned Counsel further submitted that the Tribunal has also erred in computing the amount of compensation. The

learned Counsel submitted that once the Tribunal has applied the multiplier method for assessing the proportionate loss of earning capacity of the claimant to the tune of Rs.6,48,000/-, there was no reason for the Tribunal to again add a sum of Rs.3,24,000/- on account of future prospects of the claimant. The learned Counsel further submitted that the medical expenses though were not proved by the claimant, the Tribunal has awarded a sum of Rs.1,53,701/- towards the medical expenses. The learned Counsel, in the circumstances, has prayed for modifying the award and to reduce the amount of compensation, which has been unreasonably awarded by the Tribunal.

5 Shr P.C.Mayure, learned Counsel appearing for respondent No.1 supported the impugned Judgment and award. The learned Counsel submitted that sufficient evidence was brought on record by the claimant to prove that the claimant was doing the labour work and was averagely earning Rs.6,000/- per month. The learned Counsel further submitted that the medical expenses were also sufficiently proved by the claimant. The learned Counsel pointed out that though the medical expenses to the tune of Rs.4,00,000/- were claimed by the claimant, the Tribunal has awarded a sum of Rs.1,53,701/- of which bills and receipts were placed on record. The learned Counsel further

submitted that no error has been committed by the Tribunal in awarding additional 50% compensation considering the future prospects of the claimant. The learned Counsel, therefore, prayed for dismissal of the appeal.

6 I have given due consideration to the submissions made by learned Counsel appearing for the appellant Insurance Company and the learned Counsel appearing for the original claimant i.e. respondent No.1 in the present appeal. I have also perused the impugned Judgment and evidence on record.

7 As has been noted herein above, the first objection as has been raised on behalf of the appellant Insurance Company is that the Tribunal has erred in holding the income of the claimant notionally to the tune of Rs.6,000/- per month without any evidence therefor. I am, however, not impressed with the submission so made. The alleged accident had admittedly taken place in the year 2014. In the relevant period, normally income of a person performing the labour work used to be held to the tune of Rs.6,000/- per month. The same criteria has been applied by the learned Tribunal. It does not appear to me that in holding the income of the claimant notionally to the tune of Rs.6,000/- any error has been committed by the Tribunal.

8 In so far as the medical expenses are concerned, the Tribunal has awarded the sums against which the bills and receipts are placed on record. The record reveals that though the claimant had claimed the medical expenses to the tune of Rs.4,00,000/-, the Tribunal has not awarded the entire said amount and has awarded the aforesaid amount for which the claimant had placed on record bills as well as receipt from the concerned hospitals. I, therefore, do not see any reason to cause interference in the amount so awarded by the Tribunal towards the medical expenses.

9 The compensation awarded of Rs.20,000/- under the other miscellaneous heads special diet etc., also cannot be said to be unreasonable or excessive. However, I find substance in the submission made by the learned Counsel appearing for the appellant Insurance Company that the Tribunal has certainly erred in awarding additional 50% of the amount towards the future prospects of the claimant. Once the compensation payable to the claimant under the head of future loss of income because of proportionate loss of his earning capacity was computed by the Tribunal by applying multiplier method, there was no rational in adding 50% of the said amount. The

impugned award to that extent needs to be modified. The claimant cannot be held entitled to receive the said amount of Rs.3,24,000/-. Deducting the said amount, the claimant is entitled to receive the compensation of Rs.8,21,701/-. According to me, this would be the just and fair compensation payable to the claimant.

10 The Insurance Company has deposited the entire amount of compensation as per the award alongwith interest as has been awarded by the Tribunal. The claimant has not yet withdrawn any amount from the said amount of compensation. The claimant will be entitled to withdraw the amount of Rs.8,21,701/- alongwith interest thereon @ 8% p.a. from the date of filing of the petition till deposit of the amount by the Insurance Company in this Court. The balance amount would be liable to be refunded to the appellant Insurance Company. For the reasons stated above the following order is passed:-

<u>ORDER</u>

I) The appeal is partly allowed.

II) Respondent No.1 i.e. original claimant is held entitled to the total compensation of Rs.8,21,701/- instead of the compensation awarded by the Tribunal to the tune of Rs.11,45,701/-.

III) Award be modified accordingly.

IV) From the amount deposited by the appellant Insurance Company in this Court, the amount of Rs.8,21,701/- with interest thereon @ 8% p.a. from the date of filing of the petition i.e.26.09.2014 till the actual date of deposit of the amount by the Insurance Company in this Court, be remitted to respondent No.1 – claimant alongwith interest thereon.

V) The balance amount alongwith interest accrued thereon be refunded to the appellant Insurance Company.

VI) Pending Civil Application stands disposed of.

(P.R.BORA)
JUDGE

SPT