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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1665 OF 2019
WITH
CIVIL APPLICATION NO. 2606 OF 2016
IN
FIRST APPEAL NO. 1665 OF 2019**

The New India Assurance Co. Ltd.
Add: No.45, 5th Floor, Moore Street,
Chanai – 600 001 having its Regional
Office at Sharda Centre, Erandwane,
Pune – 4.

... Appellant/
Applicant

Versus

1. Mr. Ashish Ravindra Kulkarni,
Age 22 years, Occ. Student,
R/at. S. No. 44/3, Shri Mangal,
Erandwane, Surekh Housing Society,
Pune.
2. Mr. Sivaguru Somasundaram
Age 24 years, Occ. Driver,
R/at Lalbahadur Street,
Nillathukudi, Mayitaduthrai.
3. Mrs. D. Vadhya,
Age Adult, Occ. Business,
R/at. 15, Raddiar Street,
T.N. Palayam Bahour,
Dist. Pondicherry,
VT 607402.

... Respondents

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Mr. Ketan Joshi for the Appellant.

Mr. Vishwanath S. Talkute for the Respondent No.1.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 27th NOVEMBER, 2019

PRONOUNCED ON : 19th DECEMBER, 2019

JUDGMENT :

. By this First Appeal filed under Section 173 of Motor Vehicles Act, 1988, the appellant (original opponent no.3) has impugned the judgment and award dated 29th July, 2015 passed by the Motor Accident Claims Tribunal (MACT), Pune in Motor Accident Claim Petition (MACP) No. 132 of 2009, directing the appellant and the respondent no.2 to pay jointly and severally compensation of Rs.8,00,000/- including the interim compensation awarded under Section 140 of the Motor Vehicles Act along with cost and interest @ 6% per annum from the date of petition till realization of entire amount to the applicant. By consent of the appellant and the respondent no.1, First Appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this appeal are as under:-

2. The appellant was the original opponent no.3 before the Motor Accident Claim Tribunal (MACT), Pune whereas the respondent no.1 was the original applicant (original claimant). Name of the respondent no.2 herein, who was the registered owner of the Indica Car is deleted. Respondent No.3 herein was the original opponent no.2 before the Tribunal and was the registered owner of the offending vehicle.

3. It was the case of the respondent no.1 that he along with his family members was proceeding in Indica Car bearing registration no. TN-10-T-6077 towards Pondicherry from Chennai. It was the case of the respondent

no.1 that the driver of the said car was driving the said car in slow and moderate speed by observing the traffic rules and regulations. At about 15:30 hours, when the said car reached at East Coast Road, Salavankuppan, opposite Tiger Caves, Tamilnadu, one Innova Car bearing registration no. PY-01-AC-4466 (hereinafter referred as “offending vehicle”) came from opposite direction in very high and excessive speed. Due to such high speed, the driver of the offending vehicle could not control his vehicle and went to the wrong side of the road and gave violent dash to the said Indica Car, wherein the respondent no.1 with his family members were travelling. As a result of such violent dash, respondent no.1 and his family members sustained injuries. Driver of the Indica Car also sustained injuries. Father of the respondent no.1, Ravindra Kulkarni, his brother Aniket Kulkarni and driver Selven died on the spot. Mother of the respondent no.1, Shailaja Kulkarni was severally injured and subsequently died.

4. After investigation, the Police from Mamallapuram, Dist. Kancheepuram registered a crime against the driver of the offending vehicle. Original opponent no.2 was the registered owner of the offending vehicle and was insured with the appellant at the relevant time. The respondent no.1 filed claim petition before the MACT, Pune bearing MACP No. 132 of 2009. The opponent no.1, who was the driver of the offending vehicle was deleted from the cause title of the claim petition subsequently. Original opponent no.2 i.e. owner of the offending vehicle did not appear before the

Tribunal in spite of service of notice. The matter proceeded *ex-parte* against her.

5. The appellant (original opponent no.3) filed a written statement before the Tribunal. In the said written statement, the appellant admitted that the said offending vehicle was duly insured with it at the relevant time covering the date of accident. The appellant raised an objection that the insured and insurer of the vehicle which met with accident were not joined as parties to the said claim petition and thus the said claim was bad for non-joinder of necessary parties and deserves to be dismissed on that ground also. The appellant also denied that the accident took place due to rash and negligent driving on the part of the driver of the said offending vehicle or that the said car was driven in high and excessive speed and thus the said driver of the offending vehicle lost his control. Mr. Ketan Joshi, learned counsel for the appellant invited my attention to the some of the findings rendered by the said Tribunal and submits that the finding of the Tribunal that the appellant had not proved any statutory defence is incorrect.

6. Learned counsel for the appellant submits that the driver of the offending vehicle was fully drunk and therefore he was ultimately charge-sheeted under Section 185 of the Motor Vehicles Act, 1988 along with Section 279 of the Indian Penal Code, which itself is a Criminal Act and thus the appellant being insurer there could not be any vicariously liability of the

appellant for an unauthorized and illegal act on the part of the driver. It is submitted by the learned counsel that the role of the appellant contemplated under the provisions of Motor Vehicles Act, 1939 and of 1988 was as indemnifier to the insured. He submits that the Tribunal thus could not held that the appellant is liable to pay any compensation to the respondent no.1 in view of the driver of the offending vehicle being drunk at the time of driving. Reliance is placed on the judgment of this Court in case of ***Maimulna Begam v/s. Taju, 1989 (1) B.C.R. 673.***

7. Learned counsel for the appellant invited my attention to the findings rendered in paragraph 16 of the impugned judgment and order and would submit that the compensation of Rs.5,00,000/- towards future medical expenses awarded by the Tribunal is exorbitant and thus this Court shall modify that part of the judgment and award. The next submission of the learned counsel is that though the Tribunal has awarded Rs.5,00,000/- towards future medical expenses, in the operative part of the order, Tribunal has awarded interest @ 6% p.a. on the entire amount of Rs.8,00,000/- inclusive sum of Rs.5,00,000/- from the date of application. He submits that the interest could not have been awarded by the Tribunal on the future medical expenses i.e. on Rs.5,00,000/-. He submits that this part of the judgment and award thus deserves to be set aside.

8. Mr. Talkute, learned counsel for the respondent no.1 (original claimant) on the other hand submits that if this Court comes to the

conclusion that no interest is payable on the compensation of Rs.5,00,000/- towards future medical expenses, this Court may modify the interest on compensation of Rs.5,00,000/- from the date of application. He however submits that compensation of Rs.5,00,000/- awarded by the said Tribunal towards future medical expenses is rightly awarded based on the evidence led by the respondent no.1 and after considering the judgment of this Court in case of ***New India Assurance Co. Ltd. v/s. Aslam A. Makrani, 2013 (5) Mah.L.J. 136.***

9. It is submitted that the interest @ 6% p.a. awarded by the Tribunal is on lower side and thus shall be enhanced to 9% p.a. or atleast 7.5% p.a. as awarded by the Division Bench delivered on 30th November, 2018 in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** which judgment was in the First Appeal filed by the appellant herein impugning the judgment and order dated 28th July, 2015 passed by the MACT, Pune arising out of the same accident.

10. Mr. Ketan Joshi, learned counsel for the appellant in rejoinder submits that the Special Leave Petition filed by his client against the judgment of the Division Bench of this Court in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** dated 30th November, 2018 is pending before the Hon'ble Supreme Court. He however states that the Hon'ble Supreme Court has not granted any stay on the said

judgment or the operative part of the order enhancing the amount till date. The appellant has already deposited the entire amount awarded by the Tribunal before the MACT, Pune. The respondent no.1 has not withdrawn any amount so far.

REASONS AND CONCLUSION

11. The respondent no.1 (original claimant) was proceeding in Indica car towards Pondicherry from Chennai with his family members. It was the case of the respondent no.1 that the driver of the said car was driving the said car in slow and moderate speed by observing the traffic rules and regulations. However, the offending vehicle came from opposite direction in very high and excessive speed, as a result of which the driver of the offending vehicle could not control his vehicle and went to the wrong side of the road and gave violent dash to the said Indica Car. As a result of which the father of the respondent no.1 Mr. Ravindra Kulkarni died on the spot along with his brother Aniket Kulkarni and driver Selven. The mother of the respondent no.1 also subsequently died. The respondent no.1 himself had entered into witness box and had produced various documents. The respondent no.1 was an eye witness to the said accident.

12. In his cross-examination, he admitted that he saw the offending vehicle coming from the distance 25 to 30 feet. There was no road divider.

The respondent no.1 submitted various medical record to show that he had sustained multiple injuries. He has sustained shaft humerus right arm and multiple comminuted fracture distal end humerus left elbow and because of that he could not concentrate on his carrier, he could not sit even for two hours and was not able to do even routine work. He was not able to operate computer for long period and could not carry any type of weight.

13. The respondent no.1 had also examined Dr. Ashutosh Ajri as PW-2 who produced various medical records of the respondent no.1 for his medical treatment. The respondent no.1 had also examined Mr. Ashish Babhulkar as PW-3 who deposed that the respondent no.1 had sustained various injuries, as a result of which the respondent no.1 was not able to do routine work, will not be able to operate computer, will not be able to seat for more than one hour. The respondent no.1 would not be able to drive two wheeler and four wheeler and had restriction on movement of elbow. There was no treatment to the respondent no.1 after 5th July, 2009.

14. After considering the subsequent part of evidence led by the respondent no.1, the Tribunal held it just and proper to grant Rs.75,000/- towards permanent disability, Rs.50,000/- towards pains and sufferings and Rs.1,00,000/- towards conveyance. The Tribunal also awarded Rs.50,000/- towards loss of enjoyment of life and Rs.25,000/- towards special diet. The Tribunal after considering the evidence of the Doctors examined by the

respondent no.1, awarded Rs.5,00,000/- towards future medical expenses to the respondent no.1.

15. Admittedly, the appellant did not examine any witness before the Tribunal. Several grounds are raised by the appellant in this First Appeal which are similar to the grounds raised by the appellant in the First Appeal arising out of the same accident, which appeal came to be dismissed by the Division Bench of this Court by the judgment delivered on 30th November, 2018 in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** (supra). Though Special Leave Petition against the the said judgment was filed by the appellant, the judgment or the operative part of the order passed by the Division Bench of this Court on 30th November, 2018, has not been stayed by the Supreme Court till date. The said judgment clearly apply to the facts of this case. I am respectfully bound by the said judgment.

16. There is thus no substance in the submission of the learned counsel for the appellant that the driver of the offending vehicle was not responsible for the said accident. The Division Bench of this Court has already rejected the contention of the appellant that the claim filed by the respondent no.1 was bad for non joinder of any necessary party. The said view taken by the Division Bench of this Court arising out of the same accident applies to the facts of this case. The submission made by the learned counsel for the

appellant is contrary to the view taken by the Division Bench of this Court. Similarly, the submission of the learned counsel for the appellant that the driver of the offending vehicle was fully drunk and thus there was no vicarious liability of the appellant is concerned, this submission is also rejected by the Division Bench of this Court in the said judgment delivered in the First Appeal arising out of the same accident.

17. In so far as the submission of the learned counsel for the appellant that the Tribunal could not have awarded future medical expenses in the some of Rs.5,00,000/- is concerned, a perusal of the record and the findings rendered by the Tribunal clearly indicates that the Doctors examined by the respondent no.1 had deposed that there were no chances of recovery of the respondent no.1. Future operation may require Rs.4,70,000/-. It is further deposed that due to nature of grievous injuries, respondent no.1 could not recover from his elbow. The Tribunal held that there was less probability of requiring any future medical expenses for the purpose of surgery, however it is necessary to consider aspect of granting compensation for future medical treatment. The Tribunal placed reliance on the judgment of this Court in case of ***The New India Assurance Co. Ltd. v/s. Aslam A. Makrani, 2013 (5) Mah.L.J. 136.***

18. This Court in the said judgment had held that judicial note will have to be taken in relation to the fact that due to advent of medical science,

longevity of human life has increased. During old age, capacity of earning has to fall down and cost of living and medical expenses has to continue and that also on higher side. The period for medical expenses could be even 20 years. In the said judgment this Court awarded compensation of Rs.2,00,000/- for future medical treatment. In my view, the Tribunal in this case has awarded compensation in the sum of Rs.5,00,000/- which is on higher side and is thus reduced to Rs.3,00,000/-.

19. In so far as the rate of interest awarded by the Tribunal is concerned, a perusal of the operative part of the judgment and award indicates that the Tribunal has awarded interest @ 6% p.a. from the date of petition even on the future medical expenses from the date of application till realization. In my view, Mr. Joshi, learned counsel for the appellant is right in his submission that the Tribunal could not have awarded interest on the future medical expenses from the date of application till realization. Interest on the future medical expenses awarded by the Tribunal is thus modified by this order and would be payable from the date of the judgment and award dated 29th July, 2015 and not from the date of application. The expenses which are likely to be incurred in future cannot carry any interest for the past period.

20. In so far as the rate of interest awarded by the Tribunal is concerned, it is submitted by the learned counsel for the respondent no.1 that the rate of interest awarded at 6% is on lower side and shall be enhanced to 9% or

atleast 7.5% which is awarded by the Division Bench of this Court in the First Appeal filed by the appellant arising out of the same accident. In my view, since the Division Bench of this Court has awarded interest @ 7.5% in the appeal arising out of the same accident, from the date of application till realization, the rate of interest awarded by the Tribunal i.e. 6% deserves to be enhanced to 7.5% from the date of application till realization.

21. I therefore pass the following order:-

- (a) The respondent no.1 would be entitled to recover sum of Rs.6,00,000/- (including interim compensation awarded under Section 140 of the Motor Vehicles Act), along with cost and interest @ 7.5% per annum, from the date of filing claim petition till realization of entire amount.
- (b) Appellant is directed to pay the said amount to the respondent no.1 as directed aforesaid.
- (c) The respondent no.1 would be entitled to withdraw the amount that is deposited by the appellant with the M.A.C.T., Pune upon production of an authenticated copy of this order. If there is any short fall in the amount of deposit made by the appellant, the appellant shall deposit the deficit amount as may be computed by the M.A.C.T., Pune within two weeks from the date of such computation.

- (d) If any additional payment of Court fees is required to be paid by the respondent no.1, in view of the additional compensation awarded by this Court, the respondent no.1 shall pay such additional Court fees upon computation thereof by the M.A.C.T. within two weeks from the date of such computation.
- (e) Office is directed to transmit statutory deposit of Rs.25,000/- to the M.A.C.T., Pune expeditiously. If there is any surplus amount of deposit made by the appellant, after making payment of the decretal amount to the respondent no.1, the Tribunal to refund the said amount to the appellant, upon production of an authenticated copy of this order.
- (f) The judgment and award dated 29th July, 2015 passed by the M.A.C.T., Pune in M.A.C.P. No. 132 of 2009 is modified to the aforesaid extent.
- (g) First Appeal No. 1665 of 2019 is disposed off on aforesaid terms. There shall be no order as to cost.
- (h) In view of the disposal of the First Appeal, Civil Application No. 2606 of 2016 stands disposed of.
- (i) Parties as well as M.A.C.T., Pune to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)