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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1229 OF 2017
WITH
CIVIL APPLICATION NO.3480 OF 2017
IN
FIRST APPEAL NO.1229 OF 2017

Royal Sundaram Alliance Insurance Co. Ltd.	...Appellant
V/s.	
Abhishek V. Raymane & Anr.	...Respondents

Mr.Nikhil Mehta with Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant.

Mr.Baliram V. Kamble for the for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 17TH DECEMBER, 2019.

P.C. :-

1. By this first appeal filed under section 173 of the Motor Vehicles Act, 1988 the appellant has impugned the judgment and award dated 18th March, 2017 passed by the Motor Accident Claims Tribunal in MACP No.1744 of 2010 directing the appellant and the respondent no.2 herein (opposite party no.1) to pay jointly and severally the compensation of Rs.28,98,000/- to the respondent no.1 (original applicant) with interest at the rate of 9% p.a. from the date of filing of the application till realization inclusive of "no fault liability" under section 140 of the Motor Vehicles Act, 1988. By consent of the learned counsel for the appellant and for the respondent no.1, the first appeal is heard finally. Notice on respondent no.2 is waived

pursuant to an order passed by this Court on 3rd December, 2018. Some of the relevant facts for the purpose of deciding this first appeal are as under :

2. It was the case of the respondent no.1 that at around 20.40 hours, the respondent was proceeding on his bicycle on the road opposite to Navjeevan Society, near Geeta Bhavan Hotel, P.B. Marg, Nagpada, Mumbai – 400 005 with due care and caution. At that time, suddenly one Motor Tempo No.MH – 04 EB – 9965 (for short “the offending vehicle”) came in a very fast speed in a rash and negligent manner without blowing horn and gave a dash to the respondent no.1. As a result, the respondent no.1 sustained serious injuries. The respondent no.1 filed a claim petition before the Tribunal *inter-alia* claiming compensation of Rs.20,00,000/-. The respondent no.2 remained absent though served. The claim filed by the respondent no.1 was resisted by the appellant by filing a written statement. The appellant denied that the driver of the offending vehicle was negligent. It was also pleaded that the driver was not impleaded as a party to the proceedings and thus the claim was bad for non-joinder of necessary party. It was also contended that the driver of the offending vehicle did not have valid and effective driving license at the time of accident and thus the appellant was not liable to pay any compensation to the respondent no.1.

3. The respondent no.1 entered into the witness box and was cross-examined by the appellant. The Tribunal awarded the

compensation of Rs.28,98,000/- and directed the appellant and the respondent no.2 to pay jointly and severally such compensation to the respondent no.1.

4. Being aggrieved by the said judgment and award, the appellant has preferred this appeal. Mr.Mehta, learned counsel appearing for the appellant submits that the doctor examined by the respondent no.1 had certified from the certificate produced from the Government Hospital that the respondent no.1 suffered 85.55% but the Tribunal has considered as 100% disability while awarding the compensation Rs.14,58,000/- towards future loss of earning due to disability. The next submission of the learned counsel for the appellant is that the driver of the offending vehicle did not have valid and effective driving license at the time of accident.

5. Learned counsel appearing for the respondent no.1 on the other hand submits that his client has no objection if the said amount of Rs.14,58,000/- awarded by considering loss of disability as 100% is modified by considering the disability of 85.55% which was on the basis of the certificate produced from the Government Hospital on record. He submits that the amount can be reduced to Rs.12,46,590/-. Statement is accepted.

6. Insofar as the submission of Mr.Mehta learned counsel for the appellant that the driver of the offending vehicle did not have valid and effective driving license at the time of accident is

concerned, it is submitted that the appellant did not examine the driver of the offending vehicle and also did not examine any person from the R.T.O. office and thus cannot be allowed to raise this issue now.

7. Insofar as the last submission made by Mr.Mehta, learned counsel for the appellant is concerned Mr.Mehta does not dispute that the appellant did not lead any oral or documentary evidence before the Tribunal. The appellant also did not examine any officer from the R.T.O. office to prove the case of the appellant that the driver of the offending vehicle did not have valid and effective driving license at the time of accident. In my view, there is thus no merit in this submission made by the learned counsel for the appellant. The respondent no.1 had examined himself and had entered into the witness box and had proved that the driver of the respondent no.1 was responsible for driving the vehicle in rash and negligent manner at the time of accident and thus the appellant was liable to pay compensation.

8. Insofar the disability of 100% raised by the appellant is concerned since the respondent no.1 has agreed to reduce the amount to Rs.12,46,590/-, I am inclined to modify that part of the judgment and award rendered by the Tribunal.

9. There is no other submission made by the learned counsel for the appellant for consideration of this Court. I do not find any

infirmity in the judgment and award rendered by the Tribunal except to the extent of disability considered. The findings rendered by the Tribunal are after considering the oral and documentary evidence led by the respondent no.1. The appellant did not enter the witness box. The respondent no.1 would be thus entitled to recover compensation of Rs.26,86,950/- from the appellant with interest at the rate of 9% from the date of filing of the application till realization inclusive of amount towards "no fault liability" awarded if any under section 140 of the M.V. Act.

10. The judgment and award dated 18th March, 2017 is substituted by the aforesaid judgment :

a). The respondent no.1 would be entitled to recover an amount awarded by Tribunal duly modified by this order in the sum of Rs.26,86,950/-. The respondent no.1 would be at liberty to withdraw the amount deposited by the appellant. The office is directed to transmit the amount of Rs.25,000/- to the M.A.C.T., Mumbai expeditiously. If there is any short fall in recovering the decretal amount modified by this judgment, the appellant shall deposit the balance amount within two weeks from the date of such computation by the M.A.C.T. If there is any surplus amount left after payment of the decretal amount, the Tribunal shall refund the said amount on production of an authenticated copy of this Court.

b). The First Appeal is disposed of on aforesaid terms. There

shall be no order as to costs.

11. In view of the disposal of the First Appeal, Civil Application No.3480 of 2017 does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)