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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 241 OF 2018 WITH
CIVIL APPLICATION NO.657 OF 2018

Shriram General Insurance
Company Limited

...Appellant

vs.

Irfan Issac Bhagwan & Ors.

...Respondents

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the Appellant
Mr.Abdul Karim Naziruddin Mulla for the respondent No.1
Ms Jyoti Bajpayee for respondent No.3

CORAM : R.D.DHANUKA, J.

DATE : NOVEMBER 6, 2019

P.C.:

1 The appellant-original Opponent No.4 has impugned the Judgment and Order dated 17th April 2017 passed by the Motor Accident Claims Tribunal, Satara so far as it directs the appellant and opponent No.3 to jointly and severally deposit 60% of Rs.7,10,000/- along with interest @ 9% p.a is concerned.

2 It is not in dispute that the entire amount was deposited by the appellant before the MACT in Execution Application filed by the respondent No.1 in MACP No.575/2010. The compensation amount deposited by the appellant has been already withdrawn by the respondent No.1. This Court in this First Appeal issued notice before admission to the appellant on 12th April 2018. The First Appeal is admittedly preferred after withdrawal of the amount deposited by the appellant. The appeal is preferred mainly on the ground that though

there was no prosecution filed against the appellant by the respondent No.1 and was filed only against the respondent No.3, the Tribunal apportioned the liability to respondent Nos.3 and 4 in the ratio of 40% and 60%. The case of the appellant is that though there was no evidence led by the respondent no.1 in so far as his monthly income is concerned, in stead of awarding sum of Rs.3000/- as notional income, Tribunal has considered monthly income as Rs.5000/- p.m. The appellant has also impugned amount of compensation Rs.15000/- awarded towards pains and sufferings.

3 In so far as the first submission of the learned counsel for the appellant is concerned that the Tribunal could not have directed the appellant to pay 30% of the sum of Rs.7,10,000/- is concerned, it is not in dispute that the truck driver had not been examined as a witness. Hence, the Tribunal is deprived of the best evidence to decide the element of negligence in the accident. Considering the evidence on record the Tribunal apportioned the compensation amount in the ratio of 40:60 for the appellant and auto rickshaw driver. In my view, there is no substance in the submission of the learned counsel for the appellant.

4 In so far as written submission of the learned counsel for the appellant though no evidence was led by the respondent No.1 so far as his monthly income of Rs.3000/- and thus, the Tribunal could not have considered his monthly income as Rs.5000/- p.m., there is no dispute that the respondent No.1 was working as Rickshaw Driver at Mumbai and considering this fact, the Tribunal has considered his monthly income of Rs.5,000/- p.m.

5 There is no merit in the submission of the learned counsel for the appellant in so far as compensation of Rs.15,000/- awarded towards pains and sufferings is concerned. The respondent No.1 was staying with his mother being bachelor. I therefore do not find any infirmity with that part of the Judgment and Award passed by the Tribunal.

6 At this stage, the learned counsel for the appellant submits that in so far as the amount deposited by his client with MACT in execution proceedings is concerned, the same was deposited without prejudice to the rights and contentions of the appellant is concerned, in my view, this Court had heard the parties on merit. I do not propose to direct the respondent No.1 to refund any amount to the appellant. The First Appeal is devoid of any substance and the same is dismissed.

7 In view of dismissal of the First Appeal, pending Civil Applications do not survive and the same are disposed of.

8 Office is directed to refund the statutory deposit made by the appellant with MACT, Satara in MACP No.575 of 2010.

(R.D.DHANUKA,J.)