IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1575 OF 2016

Shriram General Insurance Company Ltd. …Appellant

Versus

Vasudeo Vitthal Mhatre and Anr. ...Respondents

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Mr. Rahul Mehta I/b. M/s. KMC Legal Venture for the Appellant.
Mr. Pratap Patil for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 18th JUNE, 2019.

ORAL ORDER:-

The learned counsel for the Respondent No.1 has stated that he does not wish to file any cross objection/ cross appeal. With consent of the parties, the appeal is disposed of finally at the stage of admission.

2. The Appellant-Insurance Company has challenged the impugned judgment dated 30th April, 2016 passed by the Ex-Officio Member, MACT, Raigad-Alibag in M.A.C.P. No.192 of 2011.

3. The Respondent No.1 had filed an application under Section 166 of the Motor Vehicle Act, 1988 in view of the injuries

sustained by him in a motor vehicular accident on 23rd April, 2011. On 23rd April, 2011 the Claimant was a pillion rider on a Motor Cycle bearing No.MH06/TC-63, which was driven by one Santosh. When they reached near Ashirwad Dhaba at village Nidi, a tempo bearing No.MH09/L-6005, dashed against the said Motor Cycle. As a result of the accident, the Respondent No.1 sustained injury resulting in 36% permanent disability. The Respondent No.1 has alleged that he was a labourer and earning Rs.6,000/- per month. It is the case of the Respondent No.1 that the accident was caused due to rash and negligent driving of driver of the offending vehicle, which was owned by the Respondent No.2 and insured by the Appellant-Insurance Company. The Respondent No.1 therefore filed a Claim Petition under Section 166 of the Motor Vehicle Act, 1888 claiming total compensation of Rs.6,00,000/-.

4. The insurer/owner of the offending vehicle did not contest the petition. The Appellant-Insurance company did not dispute the liability to indemnify the insurer. The Appellant-Insurance Company denied that the Respondent No.1 had sustained injuries resulting in permanent disablement and further claimed that the Respondent No.1 is not entitled for any compensation.

5. The Claims Tribunal after considering the evidence on record awarded compensation of Rs.4,80,000/- with interest at the rate of 7.5% p.a. from the date of petition till full realisation of entire amount. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant-Insurance Company has filed this appeal.

6. The learned counsel for the Appellant submits that the Respondent No.1 has not adduced any tangible evidence to prove his income. He therefore contends that the Tribunal has erred in computing the compensation on the basis of the notional income of Rs.5,000/-. It is to be noted that the Respondent No.1 was 27 years of age and was working as a labourer. The mere fact that the Respondent No.1 was unable to prove his actual income would not lead to an inference that he was not earning or that he was unable to earn a decent living. Considering the age of the Respondent No.1, nature of his work and living conditions, the notional income of Rs.5,000/- per month, which is otherwise less than minimum wages of unskilled workers in an industry, cannot be said to be excessive or arbitrary.

7. The Respondent No.1 has suffered permanent disablement

to the extent of 36%. Considering his annual income as Rs.60,000/-, the loss of income works out to Rs.21,600/- per annum. The Respondent No.1 was 27 years of age and hence applying multiplier of 17, the loss of income works out to Rs.3,67,200/-. The Respondent No.1 had also proved that he had incurred medical expenses of Rs.94,000/-. Considering the nature of the injuries sustained, the Tribunal has awarded compensation of Rs.5,000/- towards actual loss of income, Rs.5000/- towards transport and special diet and Rs.7,000/- towards pain and suffering. The total compensation payable to the Respondent No.1 is Rs.4,78,200/-, which in my considered view is just, fair and reasonable.

8. The appeal has no merits and is accordingly dismissed with no orders as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)