IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.630 OF 2016
WITH
CIVIL APPLICATION NO.1112 OF 2017
AND
CIVIL APPLICATION NO.4351 OF 2015
IN
FIRST APPEAL NO.630 OF 2016

Reliance General Insurance Co. Ltd. …Appellant
Versus
Kum. Prakash Balu Thorat and Ors. ...Respondents

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Ms Deepika Prabhala I/b. M/s. Res Juris for the Applicant
Mr. Rajan Pawar for the Respondent Nos.1 and 2 and for the Applicant in CAF/1112/2017.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th JUNE, 2019.

ORAL ORDER:-

Admit. Mr. Rajan Pawar, the learned counsel for Respondents waives service of notice of final hearing. With consent of the parties, appeal is heard finally.

2. The Appellant herein has impugned judgment dated 6th October, 2015 in M.A.C.P. No.1376 of 2011, M.A.C.T., Nashik. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs.11,01,689/- with interest at the rate of 6% from the date of institution of claim till its realization.

3. The Respondent No.1, who was a minor had filed a claim petition under Section 166 of the Motor Vehicles Act through the Respondent No.2 his mother and natural guardian. The case of the claimant was that on 1st October, 2011 he was proceeding from Nashik to Wani, as a pillion rider on a motorcycle No.MH-15/CW-1536, which was driven by his friend. When they reached near Mehta Company Gate, Panchavati, one Indigo Car No.MH-15/BX-6552 dashed against the motorcycle and as a result, the claimant sustained grievous injuries. The claimant states that the accident was caused solely due to the rash and negligent driving by the driver of Indigo Car.

4. The Respondent No.3, who is the owner and driver of the offending vehicle had raised the plea that he had already paid an amount of Rs.1,00,000/- to the Claimant. He further claimed that the vehicle was duly insured with the Appellant-Insurance Company and that the Insurance Company is liable to indemnify him.

5. The Appellant -Insurance Company claimed that the driver of the offending vehicle was not holding a valid and effective driving license and that it is not liable to indemnify the insurer in view of breach of terms and conditions of policy.

6. On appreciating the evidence adduced by the respective parties, the Tribunal held that the accident was caused due to rash and negligent driving by the driver of offending vehicle. The Tribunal considered the notional income of the Claimant at the rate of Rs.3,000/- p.m. and considering the nature of the injuries and the extent of permanent disablement assessed loss of income to the tune of Rs.6,48,000/-. The Tribunal also awarded compensation of Rs.1,78,689/- towards medical expenses, Rs.2,00,000/- towards future medical expenses and Rs.75,000/- towards pain and sufferings, special diet, attendant charges, etc. Thus, by the impugned judgment and award the Tribunal awarded total compensation of Rs.11,01,689/- with interest at the rate of 6% from the date of institution of the claim till realization of the amount. Being aggrieved by this judgment and award, the Appellant-Insurance Company has filed this appeal.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. There is no dispute regarding involvement of the Indigo car No.MH-15/BX-6552 in the accident. The Tribunal has recorded a finding that the accident was caused due to rash and negligent driving

by the driver of Indigo car. The Respondent No.1 claimant had sustained grievous injury in the said accident resulting in 40% permanent disability. The learned counsel for the Appellant has not disputed the amount awarded by the Tribunal under the head of loss of income due to permanent disability, medical expenses and pain and suffering charges, etc. The only dispute is in respect of Rs.2,00,000/- which is towards future medical expenses. She submits that the Respondent No.1 /Claimant had not adduced any evidence to justify compensation of Rs.2,00,000/- towards future medical expenses.

9. Per contra, the learned counsel for the Respondent No.1 has submitted that the Respondent No.1-Claimant had sustained grievous injuries, for which he has undergone major surgery and is yet to undergo another major surgery.

10. The claimants had suffered fracture of both hands and injuries on pelvic region. He had undergone surgery for fracture as well as injuries on pelvic region. He was admitted in the hospital on 2/10/2011 till 27/11/2011 and had undergone surgery for the fracture as well as injuries to the pelvic region. He was once again admitted on 23/2/2012 till 25/2/2012 and 5/7/2012 till 6/7/2012 and during his stay in the hospital, he had undergone several surgeries. The evidence

shows that the colostomy bag has been inserted and that the Claimant has yet to undergo another major surgery only after he develops sufficient strength in his pelvic region.

11. In the light of the above medical evidence, the Tribunal was justified in awarding compensation of Rs.2,00,000/- towards future medical expenses. The amount awarded by the Tribunal is just and reasonable and there are no reasons to interfere with the same. Under the circumstances, the appeal has no merits and is accordingly dismissed. Civil applications stand disposed of.

12. The statutory deposit, if deposited before this court may be transferred to the Tribunal. The Appellant- Insurance Company is permitted to withdraw the same. The amount as per the award be disbursed to the claimant.

(SMT. ANUJA PRABHUDESSAI, J.)