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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.210 OF 2020

Bharti AXA General Insurance Co. Ltd.	...Appellant
V/s.	
Sandip V. Marathe & Ors.	...Respondents

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the Appellant.

Mr.Sandeep Mishra for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 5TH MARCH, 2020.

P.C. :-

1. By this appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has challenged the impugned judgment and award dated 14th February, 2018 delivered by the M.A.C.T., Thane, allowing the application filed by the respondent no.1 (original claimant) partly and directing the appellant and the respondent no.1 to pay jointly and severally an amount of Rs.8,21,058/- including NFL compensation with interest at the rate of 8% p.a. from the date of petition till realization of the amount. By consent of the appellant and the respondent no.1, the First Appeal is heard and disposed of finally.

2. Some of the relevant facts for the purpose of deciding this First Appeal are as under :

3. It was the case of the respondent no.1 that on 13th

December, 2012 he was riding his motorcycle with moderate speed, by correct side of the road, and proceeding towards his workplace at Chembur but at about 8.30 a.m. when he reached near Bhakti Bhavan Bus Stop, Chembur, Mumbai, driver of one car bearing No.MH 04 – EQ – 8502 which was proceeding towards the same direction, suddenly opened door of his car in negligent manner for spitting, without giving any indicator or signal, due to which motorcycle of the respondent no.1 banged on door of the offending car. The respondent no.1 sustained multiple grievous injuries due to the said accident. The respondent no.1 was admitted in Sushrut Hospital, Mulund, Mumbai and was thereafter treated and operated for the accidental injuries as indoor patient.

4. It was the case of the respondent no.1 that he incurred Rs.3,00,000/- for medical treatment and medicines and suffered permanent disability. The respondent no.1 was 32 years old and was doing the job of supervisor with All Services Global Private Limited, Goregaon (East), Mumbai and was earning Rs.9,600/- per month. The respondent no.1 filed an application for compensation before M.A.C.T., Thane *inter-alia* praying for a claim of Rs.1,00,000/-. The claim was resisted by the respondent nos.1 and 2. The Tribunal framed three issues for determination. The respondent no.1 (original claimant) filed his affidavit of evidence and also filed affidavit of evidence of Pravin Ramchandra Mankar, Manager of Medi Assist Insurance TPA Pvt. Ltd. and an affidavit of Dr.Anil Bhagwan Mali attached with Sanjivani Orthopedic & General Hospital, Mulund. He

also filed affidavit of Kumod Babarao Sukalika, General Manager of All services Global Pvt. Ltd. Co. who was the employer of the respondent no.1. The appellant did not examine any witness. The Tribunal allowed the claim made by the respondent no.1 partly in the sum of Rs.8,21,058/- with interest at the rate of 18% p.a. from the date of the petition till realization of the said amount. The original opponent no.1 did not file any appeal against the said order.

5. Mr.Mehta, learned counsel appearing for the appellant submits that the respondent no.1 (original claimant) himself was negligent in driving the vehicle owned by him and thus no compensation could be awarded by the Tribunal against the appellant. The next submission of the learned counsel is that the Tribunal could not have considered permanent disability of the respondent no.1 at 20% and that part of the order is without any evidence. The last submission of the learned counsel is that though the Tribunal has considered future loss of income of Rs.5,04,464/-, the Tribunal has also awarded a sum of Rs.35,000/- to the respondent no.1 towards injuries and disability alleged to have been caused to the respondent no.1.

6. Learned counsel for the respondent no.1 relied upon the the findings rendered by the learned Tribunal however, on instructions states that his client has no objection if the amount of Rs.35,000/- awarded towards compensation for the injuries and disability awarded by the learned Tribunal is set aside. Statement is

accepted.

7. Insofar as the first submission of the learned counsel for the appellant that the respondent no.1 himself was negligent in driving the motorcycle is concerned, the respondent no.1 had admittedly entered the witness box and proved the negligence of the driver of the offending vehicle. The appellant did not enter the witness box. There is thus, no substance in this submission of the learned counsel for the appellant.

8. Insofar as the second submission of the learned counsel that the Tribunal could not have considered permanent disability of 20% is concerned, the respondent no.1 had examined Dr.Anil Bhagwan Mali (C.W. 3) who had issued various certificates. Though according to the said certificates, the respondent no.1 had suffered 50% of the disability, the Tribunal has considered the disability to the extent of 20% only. I am thus, not inclined to interfere with the findings rendered by the learned Tribunal. The amount of Rs.35,000/- awarded by the learned Tribunal is in addition to the future loss of income of Rs.5,04,464/-. The Learned counsel for the respondent no.1 has fairly agreed the deletion of the sum of Rs.35,000/- awarded by the learned Tribunal by the impugned judgment and award. The amount of Rs.35,000/- awarded towards injuries and disability is accordingly set aside.

9. Learned counsel for the respondent no.1 tenders the

calculation after deletion of the amount of Rs.35,000/- from the claim of compensation awarded by the Tribunal. According to the said calculation, the respondent no.1 is entitled to recover a sum of Rs.7,86,058/- with interest as awarded. The calculation is taken on record.

10. Mr.Mehta, learned counsel for the appellant did not urge any other submission for consideration of this Court except the aforesaid submissions which are already dealt with. The appeal is devoid of merit to the extent to amount of Rs.35,000/-.

11. I therefore, pass the following order :-

a). The respondent no.1 would be entitled to recover a sum of Rs.7,86,058/- inclusive of N.F.L. compensation with interest at the rate of 8% p.a. from the date of petition till realization of the said amount from the appellant out of the amount deposited by the appellant before the M.A.C.T., Thane.

b). If there is any short fall in recovering the decretal amount awarded by the judgment and award dated 14th February, 2018 and modified by by this order, 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 to the respondent no.1, the Tribunal shall refund the said amount to the appellant on production of an authenticated copy

of this order.

c). The office is directed to transmit the amount of Rs.25,000/- deposited by the appellant as and by way of statutory deposit to the M.A.C.T., Thane expeditiously.

d). The operative part of the judgment and award dated 14th February, 2018 passed by the Tribunal is substituted by this order.

e). The First Appeal is disposed of in aforesaid terms.

f). In view of disposal of the First Appeal, pending Civil Applications, if any, also stand disposed of.

g). All parties as well as M.A.C.T., Thane to act on the authenticated copy of this order.

h). There shall be no order as to costs.

(R.D. DHANUKA, J.)