

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1003 OF 2019
ALONG WITH
CIVIL APPLICATION NO.2559 OF 2019**

Divisional Manager,
Reliance Insurance Co. Ltd. .. Appellant
Vs.
Ajita Rajendra Pawar & Ors. .. Respondents

**ALONG WITH
CIVIL APPLICATION NO.2824 OF 2019
IN
FIRST APPEAL NO.1003 OF 2019**

Ajita Rajendra Pawar & Anr. .. Applicants

In the matter between

Divisional Manager, Reliance
Insurance Co. Ltd. .. Appellant
Vs.
Ajita Rajendra Pawar & Ors. .. Respondents

Mrs.Shalini Shankar for the appellant.
Mr.Pritesh K. Bohade for the respondent nos.1 & 2/applicants in CA.

**CORAM : R.D.DHANUKA, J.
DATE : 18th February 2020**

P.C.:

. First Appeal is not on board taken on board.

2. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant has impugned the judgment and award dated 3rd October 2018 passed by the MACT, Nashik in MACP No.119 of 2014

allowing the claims made by the respondent nos.1 & 2 partly and directing the appellant and the respondent no.3 to jointly and severally pay Rs.79,00,000/- including NFL with interest @6% p.a. from the date of claim application till realisation.

3. By consent of the appellant and the respondent nos.1 & 2, First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under : -

4. It is the case of the respondent nos.1 & 2 that the respondent no.1 was proceeding on activa motorcycle bearing registration No.Mh-15 BZ-5946 from Saheba Hotel towards Bhabhanagar. While she was crossing signal of Mumabi Naka, one truck bearing registration No.RJ-24 G-1520 came in high speed and gave dash to the activa motorcycle driven by the respondent no.1 and caused an accident. The respondent no.1 sustained grievous injuries due to accident. The respondent no.2 filed a claim application before the Tribunal. At the time of the accident, the respondent no.1 was 47 years old. She was working with Life Insurance Corporation and was drawing salary of Rs.52,787/- per month. The said claim was resisted by the appellant by filing written statement.

5. Tribunal framed four issues for determination. The respondent no.1 examined the respondent no.2 and also Narendra

Nilkanth Nagraj and Dr.Rahul Bhimrao Bawiskar as witnesses and produced various documents on record. The appellant did not lead any evidence before the Tribunal. Tribunal by judgment and award dated 3rd October 2018 directed the appellant and the respondent no.3 to jointly and severally pay Rs.79,00,000/- including NFL with interest @6% p.a. from the date of claim application till realisation.

6. Mrs.Shalini Shankar, learned counsel for the appellant invited my attention to some of the findings rendered by the Tribunal and would submit that income considered by the Tribunal is on higher side. She submits that compensation awarded by the Tribunal are exorbitant.

7. It is lastly submitted that if this Court comes to the conclusion that the appellant is liable to pay compensation to the respondent no.1 at the first instance, this Court shall permit the appellant to recover the amount payable to the respondent no.1, if any, from the respondent no.2.

8. Learned counsel for the respondent nos.1 & 2, on the other hand, relied upon the judgment of the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors., (2017) 16 SCC 680*** and would submit that Tribunal has awarded just

compensation to the respondent nos.1 and 2 and thus no interference is warranted in the impugned judgment and award.

9. A perusal of the impugned judgment and award indicates that the respondent no.1 was 47 years old at the time of accident. Witness examined by the respondent no.1 proved that the said respondent no.1 was drawing annual income of Rs.3,75,737/- in the financial year 2008-09 and was drawing annual income of Rs.4,24,991/- in the financial year 2009-10. After deducting taxes, annual income in the hands of the respondent no.1 was Rs.3,60,000/-. In paragraph 13 of the impugned judgment and award, Tribunal has considered the said amount as annual income for the purpose of considering just compensation.

10. Tribunal has applied the principles of law laid down by the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (supra)*** and has rightly applied multiplier 13 considering the age of the respondent no.1 as 47 years.

11. Tribunal has also considered the evidence produced by the witnesses examined by the respondent no.1 and has rightly allowed the compensation towards medical bills of Rs.9,50,000/- and towards nursing charges to the extent of Rs.4,00,000/- considering the nature and circumstances of the injuries sustained to the respondent no.1.

12. Learned counsel for the respondent no.1 does not dispute that there was permanent disability of the respondent no.1 due to the said accident. Tribunal also has rightly considered Rs.66,000/- towards pain and suffering during the course of last 8 years on the date of passing the said judgment. The appellant admittedly did not lead evidence. In my view, amount of compensation allowed by the Tribunal are in conformity with the principles of law laid down by the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (supra)*** and after considering the oral and documentary evidence led by the respondent no.1. The compensation awarded by the Tribunal in the facts and circumstances of this case is fair, reasonable and just compensation and does not warrant any interference.

13. In so far as the submission of the learned counsel for the appellant that the appellant is permitted to recover the amount payable to the respondent no.1, if any, from the respondent no.2 is concerned, the appellant did not lead any evidence to prove that the driver of the offending vehicle did not have any valid license at the time of accident. I am thus not inclined to consider this submission of the learned counsel for the appellant. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the First Appeal, pending civil applications, if any, do not survive and are accordingly disposed of.

14. After deducting the amount as withdrawn, the respondent no.1 would be at liberty to withdraw the entire amount with interest out of the amount deposited by the appellant before the Tribunal on production of an authenticated copy of this order.

15. If there is any shortfall in recovering the amount by the appellant, the appellant shall deposit the said shortfall amount within two weeks from the date of computation of the said amount by the Trial Court. If there is any surplus left after payment of decretal amount, the same shall be refunded to the appellant. Office is directed to transmit the statutory deposit of Rs.25,000/- to the concerned trial Court expeditiously. Parties as well as the concerned trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.