

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

FIRST APPEAL NO. 1207 OF 2017

Reliance General Insurance Co. Ltd.

... Appellants

Versus

Shridhar Shankar Mane and Anr.

... RespondentS

.....
Mr. Rahul Mehta i/b M/s.KMC Legal Ventures for the Appellant.

Mr.S.S.Vidyarthi a/w Ms.Ruchika Dave for the respondent no.1

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CORAM : R.D. DHANUKA, J.

DATE : 5TH MARCH, 2020

JUDGMENT :

1. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellants (original Insurer) has impugned the judgment and award dated 23rd January, 2017 passed by the Motor Accident Claim Tribunal, Mumbai in Claim Application No.2644 of 2011 directing the appellant to pay the sum of Rs.18,26,900/- to the Respondent No.1 (original applicant) with interest @ 9% p.a. from the date of filing of application till realisation.

2. By consent of the appellant and the respondent no.1, First Appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this appeal are as under:

3. It was the case of the respondent no.1 that on 5th June, 2011 at 9.00 a.m. he was proceeding to his native place by luxury bus. The said luxury bus was being driven at moderate speed with due care and caution. When the said bus reached at Mumbai Goa road, village Oli, Taluka Rajapur Dist: Ratnagiri, at that time, the Tractor No.MH-43-E-8163 (hereinafter referred to as the offending vehicle) came from opposite direction to its wrong side in a very fast speed and in a rash and negligent manner without blowing horn or without giving any signal and dashed against the said luxury bus on the right side covering seat nos.3 to 25. The applicant was sitting on the seat no.25 and sustained serious injuries. He filed claim application before the Tribunal claiming compensation in the sum of Rs.8.0 lacs under various heads. The opposite party did not file any written statement and remained absent. The claim filed by the respondent no.1 was resisted by the appellant by filing written statement.

4. The respondent no.1 examined himself as AW-1 and was cross-examined by the appellant's advocate. The respondent no.1 also examined Mr.Dilip Kumar K. Waghela who was the employer of respondent no.1 at the time of the accident. The said witness was also cross-examined by the appellant's advocate. The appellant did not examine any witness before the Tribunal. By a judgment and award dated 23.01.2017, the Tribunal allowed the Claim Application filed by the respondent no.1 and directed the

appellant and the opposite party to pay jointly and severally compensation of Rs.18,26,900/- with interest @ 9% p.a. from the date of filing of the application till realisation of the amount in full.

5. Mr.Rahul Mehta the learned counsel for the appellant invited my attention to the findings rendered by the Tribunal and would submit that the Tribunal has awarded various claims in favour of the respondent no.1 without any basis. He submits that the driver of the offending vehicle was not responsible for the said accident. In his alternate submission, he submits that the driver could have utmost awarded a sum of Rs.7,14,905/- with interest to the respondent no.1 as against the amount of compensation awarded at Rs.18,26,900/-.

6. Mr.S.S.Vidyarthi, the learned counsel for the respondent no.1 invited my attention to the evidence of the witnesses examined by his client, injury certificate, hospital papers and disability certificate. He also relied upon the compilation of various documents which were tendered by his client through his witnesses examined by his client before the Tribunal. He also placed reliance on various findings rendered by the Tribunal in his favour. It is submitted by the learned counsel that the appellant did not examine any witness including the witness of the driver of the offending vehicle. The applicant was the sole eye witness to the accident and had proved that the driver of the offending vehicle was solely responsible for the said accident.

In so far as amount of compensation awarded by Tribunal is concerned, it is submitted that the Tribunal has awarded the compensation on the basis of the evidence produced by the respondent no.1 and on the basis of the principles laid down in the judgment of the Supreme Court referred in paragraph 20 of the judgment and award rendered by the Tribunal.

7. The respondent no.1 who suffered with an accident himself entered the witness box and produced various documents. The deposition of the respondent no.1 in his examination in chief was not shattered in cross examination by the appellant. Similarly, the evidence of A.W.No.2, Mr.Dilipkumar Waghela, who was the employer of the respondent no.1, also was not shattered in cross-examination. Admittedly, the appellant did not examine the witness including the driver of the offending vehicle.

8. A perusal of the judgment and award dated 23.01.2017, clearly indicates that the Tribunal has considered the oral and documentary evidence produced by respondent no.1 including the cross-examination of the witness examined by the respondent no.1 by the appellant. After considering the oral and documentary evidence and considering the fact that respondent no.1 who was a skilled workman i.e. carpenter and painter and the fact that he had lost his right hand resulting in 100% functional disability, awarded Rs.13,20,000/- by considering the monthly income at Rs.12,000/- and by adopting the formula and requisite multiplier. The

Tribunal also awarded reasonable amount towards medical expenses, special diet and conveyance. The Tribunal applied the principle of law laid down by the Hon'ble Supreme Court in case of ***Amresh Kumari vs. Niranjana Lal Jain (2010) (2) T.A.C. 631 (SC)*** and the judgment in the case of ***Dr.(Mrs.) K.R.Tandum vs. Omprakash and Anr. 1999 (ACJ) 199***. I do not find any infirmity in the findings and the conclusion rendered by the Tribunal. There is no substance in any of the submissions made by Mr.Mehta the learned counsel for the appellant. In my view, Appeal is devoid of merit. I therefore, pass the following order:

- a. First Appeal No.1207 of 2017 is dismissed.
- b. Appellant is directed to pay the decretal amount with interest as awarded by the Tribunal to the Respondent no.1 within eight weeks from the date of uploading of this judgment excluding the payment already withdrawn if any, by the respondent no.1.
- c. If there is any shortfall in the amount deposited by the appellant before the tribunal, appellant shall deposit such shortfall amount within four weeks from the date of computation of such shortfall by the Tribunal. If there is any surplus amount deposited by the Tribunal, same shall be refunded to the appellant by the Tribunal after paying the decretal amount to the respondent no.1.

- d. Parties as well as Tribunal to act on the authenticated copy of this order.
- e. There shall be no order as to costs.

(R.D. DHANUKA, J.)