

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

FIRST APPEAL NO.802 OF 2012

ICICI Lombard General Insurance Co. Ltd. .. Appellant
Vs.
Devendranath R. Pande & Anr. .. Respondents

Mr.Rahul Mehta i/by M/s.KMC Legal Venture for the appellant.
Mr.Niketan Nakhawa for the respondent no.1.

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

P.C.:

. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 8th March 2010 passed by the Commissioner for Workmen's Compensation & Judge, 10th Labour Court, Mumbai directing the appellant and the respondent no. 2 to jointly and severally pay Rs.1,46,966/- with interest @12% p.a. from the date of application till realisation.

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

3. The respondent no.1 was employed as helper by the respondent no.2 on his motor vehicle No.MH-04-CA-4137 on monthly salary of Rs.4,000/-. On 9th April 2008, the said respondent no.1 met with an accident and sustained multiple serious injuries while he was being carried in the said vehicle on the road opposite Huma Cinema, LBS Marg, Mulund, Kanjurmarg, Mumbai. He was 50 years old at the time of accident and was admitted in Rajawadi Hospital and discharged on 14th May 2008. Thereafter, he had undergone OPD treatment as a result of serious fracture injuries. He is not in a position to continue his occupation as a helper and sustained 100% loss of earning capacity. He claimed compensation of Rs.3,67,416/- before the Trial Court. The appellant filed written statement at Exhibit C2 admitting all the material particulars as the respondent no.1 was employed as helper.

4. Trial court framed four issues for determination. The respondent no.1 led oral evidence by examining himself and also examined Dr.Naresh Khanna as AW-2 and also produced various documents. The respondent no.2 did not lead any oral evidence and filed pursis. The appellant led evidence of its manager as OPW 1 and closed the oral evidence.

5. Trial Court after considering the oral and documentary evidence and pleadings directed the appellant and the respondent no.2 to

pay jointly and severally a sum of Rs.1,46,966/- with interest @12% p.a. from the date of application till realisation.

6. Mr.Mehta, learned counsel for the appellant invited my attention to the findings rendered by the trial Court and would submit that he is not able to assail the findings rendered by the Trial Court in paragraph 12 of the impugned judgment and decree in view of the judgment of the Andhra Pradesh High Court in the case of ***National Insurance Co. Ltd. Vs. D. Sivasankar & Anr, 2006 – Lab I.C. 2699- Andhra Pradesh H.Co.***

7. Learned counsel thereafter invited my attention to the findings rendered in paragraph 15 of the impugned judgment and award and would submit that he would not able to assail that part of the findings also in view of the fact that notional income at Rs.4,000/- per month has been considered on the basis of schedule 2 of the Employees Workmen Compensation Act. Statement is accepted. No other issues are urged by the learned counsel for the appellant.

8. I have perused the findings rendered by the trial Court on various issues framed. I do not find any substantial question of law arising in this First Appeal. Even otherwise, the trial Court is justified in awarding the claim of Rs.1,46,966/- with interest @12% p.a. from the

date of application till realisation. 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.

9. The respondent no.1 would be at liberty to withdraw the entire amount with interest deposited by the appellant before the Trial Court on production of an authenticated copy of this order.

10. 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.

11. In so far as the amount of costs is concerned, the appellant shall deposit the costs of Rs.10,000/- with the trial Court within two weeks from today. The respondent no.1 would be at liberty to withdraw the said costs amount also. Parties as well as the concerned trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.