IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2965 OF 2019
IN
FIRST APPEAL NO.1154 OF 2019
WITH
FIRST APPEAL NO.1154 OF 2019

Sadashiv Bhau Gorakhi Walawalkar .. Applicant

In the matter between

New India Assurance Co.Ltd .. Appellant
Versus
Sadashiv Bhau Gorakhi Walawalkar
and ors .. Respondents

…

Mr.Amey C. Sawant for the applicant in CA No. 2965/19.
Mr. Milind Vasant More for the appellant.

CORAM: BHARATI DANGRE, J.
DATED : 16th MARCH 2020

P.C:-

1 On 24th September 2019, the First Appeal filed by the Insurance Company is admitted. Today, when the learned counsel for the applicant pressed for Civil Application No.2965 of 2019 in which he sought withdrawal of the amount, the learned counsel for the parties have finally argued the Appeal and therefore it is being decided finally.

2 The New India Insurance Company is aggrieved by the judgment dated 17th April 2018 passed by the MACT, Sindhudurg. The respondent who was driving his Bajaj Pulsar motor cycle bearing Registration No. MH-07-J-2832 on the National Highway No.17, the Tempo hit him from the opposite direction and the respondent was dragged for some distance. The respondent sustained injuries and he became unconscious. On being hospitalized he remained in the said state for 15 days. The incident referred to above involved four vehicles, one being the Bajaj Pulsar driven by the respondent and the other vehicle being a Tempo trax and Tata Tempo and another Hero Honda Passion Motor cycle. The Tribunal on accepting that there was no fault on part of the applicant and he had not contributed to the same and the accident had occurred only on account of rash and negligent driving of the Tata Tempo driver and the tempo trax driver, which inference came to be drawn on the basis of the C.R which was registered with Kudal Police Station.

4 The respondent, at relevant time, was aged 37 was subjected to medical treatment which resulted into a permanent disability to the extent of 55% to both lower limb and 25% to the upper limb. The medical certificates and the records were placed before the Tribunal through Dr.Kamath who had entered the witness box. While answering the issue as to whether the accident had occurred due to rash and negligent driving of the

vehicles involved and whether the respondent had suffered permanent disablement, the Tribunal answered the issues in the affirmative. As far as his contribution is concerned, the issue was answered in the negative. The Insurance Company is held liable to pay an amount of Rs.13,07,361/- by way of compensation.

5 The appellant is aggrieved by the said award of compensation and the learned counsel for the appellant would submit that the Appeal is filed on two counts; the first being that there were four vehicles involved in the accident and the second being that the computation of income of the respondent has not been based on any positive evidence and resultantly, the award of compensation of Rs.13,07,361/- calls for interference.

6 On perusal of the impugned judgment, after noting that the aforesaid issues were answered in favour of the respondent, the Tribunal proceeded to deal with the quantum of compensation. For the purpose of ascertaining his income, the evidence of the Bank Manager, Shri Vivekananda Patil has been relied upon. The said witness has deposed about the entries in the account of the claimant which was maintained by ICICI Bank. On a deposit that too at regular intervals, regular amounts were credited in the account of the applicant and the said amount being Rs.7,968/- was taken to be the basis of the earning of the claimant. The Company not being in existence, none could have

been a competent witness to enter into the witness box. There being no dispute about the fact that the claimant had a regular source of earning and the regular income the amount of entries reflecting in his account to the tune of Rs.7,968/- was taken as his income per month.

7 Considering his age to be 36 years, multiplier of 15 was applied and loss of income was calculated to be Rs.4,26,600/-. For pain and suffering, an amount of Rs.25,000/- was granted, Rs.8,55,761/- came to be granted towards actual medical expenses and ultimately the total amount of compensation awarded is Rs.13,07,361/-. Once a positive finding has been recorded that the driver of Tata Tempo vehicle and one of Trax vehicle were responsible for the accident, the Tribunal has held liable the driver of both the vehicles as well as the New India Assurance Company to be jointly and severally liable to be paid by way of compensation along with interest @ 9% p.a from the date of filing of the petition till the entire amount is paid.

8 The submission of the learned counsel for the appellant that there was no basis for arriving at the income of the claimant, is without substance since in the peculiar circumstances, the best evidence available has been accepted by the Tribunal and since the entries in the account maintained in the ICICI bank reflected a regular earning of Rs.7,968/-, the same was accepted as

the income and the deposition of the witness was to the effect that this amount came to be deposited at regular intervals. The amount of Rs.7,900/- not being an exorbitant amount and since the claimant was working as the Medical Representative, the said amount is postulated as the income of the claimant working in the said capacity. Since no illegality or any perversity is to be found in the impugned judgment which is based on the evidence brought before the Tribunal, the judgment do not call for any interference and is upheld.

9 The First Appeal filed by the Insurance Company must therefore fail and deserves a dismissal and is accordingly dismissed. The respondent is held entitled to the amount awarded by the Tribunal.

10 Since the First Appeal is dismissed, Civil Application does not survive and is disposed of accordingly.

SMT. BHARATI DANGRE, J