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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.22069 OF 2019
WITH
CIVIL APPLICATION NO.2990 OF 2019
WITH
CIVIL APPLICATION NO.2991 OF 2019
IN
FIRST APPEAL (STAMP) NO.22069 OF 2019

National Insurance Co. Ltd.

...Appellant /
...Applicant

V/s.
Shridhar C. Kutal & Anr.

...Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant / Applicant.

Mr.Bharat Gadhavi with Mr.Vaibhav Kulkarni for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 10TH JANUARY, 2020.

P.C. :-

1. Heard learned counsel appearing for the appellant and for the respondent no.1. By consent of parties, the appeal is heard finally at the admission stage.

2. By this appeal, the appellant (original respondent no.2) has impugned the judgment and award dated 16th December, 2017 passed by the Motor Accident Claims Tribunal, Mumbai directing the appellant (original respondent no.2) to pay a sum of Rs.10,40,420/- with interest at the rate of 9% p.a. from the date of institution of claim till realization jointly and severally to the respondent no.1 herein.

3. Mr.Mehta, learned counsel appearing for the appellant invited my attention to various findings recorded by the Tribunal while allowing the claim of Rs.10,40,420/-. He submits that in paragraph 24 of the impugned judgment and award, the Tribunal has considered Rs.3,00,000/- as special damages for loss of future salary, loss of comforts and loss of future amenities. He submits that the Tribunal has already allowed the claim under the head of future loss of earning in paragraph 19 and loss of salary during the treatment in the sum of Rs.2,26,644/- and Rs.89,910/- and thus the Tribunal could at the most have awarded Rs.2,00,000/- against the heads of loss of comforts and loss of future amenities.

4. Mr.Gadhavi, learned counsel appearing for the respondent no.1 has no objection if the amount of Rs.3,00,000/- awarded in paragraph 24 is reduced to Rs.2,00,000/-. He does not dispute that the loss of future salary awarded in the said paragraph is already considered in paragraph 19 of the judgment and award. Statement is accepted.

5. No other arguments are advanced by the learned counsel for the parties. I therefore, pass the following order :-

a). The appellant is liable to pay a sum of Rs.9,40,420/- to the respondent no.1 herein inclusive of compensation under “no fault liability” with interest at the rate of 9% p.a. from the date of institution

of the claim i.e. 30th October, 2010 till realization.

b). The respondent no.1 would be entitled to recover the amount from the amount deposited by the appellant before the M.A.C.T., Mumbai.

c). If there is any short fall in recovering the decretal amount modified by this judgment, 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, the Tribunal shall refund the said amount to the appellant on production of an authenticated copy of this Court.

d). The judgment and award dated 16th December, 2017 is modified to the aforesaid extent. The First Appeal is disposed of on aforesaid terms. There shall be no order as to costs.

e). Office is directed to transmit the sum of Rs.25,000/- deposited by the appellant as and by way of statutory deposit to the M.A.C.T., Mumbai.

6. In view of the disposal of the First Appeal, Civil Application Nos.2290 of 2019 and 2291 of 2019 do not survive and are accordingly disposed of. In view of the fact that the respondent no.1 was allowed to withdraw 50% of the amount upon furnishing an undertaking pursuant to an order passed by this Court, the said order

also stands vacated in view of the disposal of the first appeal. No order as to costs. All parties and the Tribunal to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)