**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1505 OF 2022

New India Insurance Company .. **APPELLANT**

VERSUS

Shabbir Husen Shaikh and others .. **RESPONDENTS**

...

Mr.A.B.Kadethankar, Advocate for the petitioner.
Mr.Suhas R. Shirsat, Advocate for respondent no.1.

...

CORAM : S.G.DIGE, J.
DATE : 04.10.2022

P.C. :

1] By consent of both the parties, this matter is heard finally at the admission stage.

2] The issue involved in this appeal is the income of the original claimant - respondent no.1 considered by the Tribunal is on higher side.

3] It is the contention of the learned counsel for the appellant that the original claimant filed income tax returns before the Tribunal were after the date of accident.

The Tribunal has considered the income of the petitioner on higher side, which is not proper. The learned counsel further submits that Exh.57 is the income tax returns showing income of respondent no.1 for the financial year 2014-15 i.e. after the date of accident. The accident is taken place on 24.04.2014. Exh.56 is the income tax returns showing the income of respondent no.1 of earlier year i.e. financial year 2013-14. The Tribunal should have considered the annual income of respondent no.1, which is mentioned in Exh.56 i.e. financial year 2013-14. But it has not been considered, hence, requested to allow the appeal.

4] The learned counsel for respondent no.1 submits that appropriate order be passed.

5] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is limited. It is the contention of the learned counsel for the appellant that Exh.57 which shows the income of respondent no.1 is for the financial year 2014-15 i.e. after the date of accident. Admittedly, accident is taken place on 24th April, 2014 and the income tax returns Exh.57 is for the year 2014-15. In my view, Exh.57 should not have been considered by the Tribunal. While considering the income of respondent no.1, the earlier financial year income is necessary to be considered. Exh.56 is the income tax returns for financial year 2013-14 it shows the income of respondent no.1 is of Rs.2,17,297/- per annum, hence, I am considering this income of respondent no.1. Respondent no.1 has suffered 56% permanent disability, then loss of income of respondent no.1 comes to Rs.1,21,686/-. The Tribunal has applied 15 multiplier, which is proper. The loss of income of respondent no.1 comes to Rs.1,21,686 x 15 = Rs.18,25,290/-. The Tribunal has considered it Rs.20,16,000/-. The Tribunal has awarded compensation under other heads, which are proper. The total compensation comes to Rs. Rs.26,20,278/-. In view of above calculation of Rs.18,25,290/- and the compensation awarded under other heads, the amount comes to Rs.24,29,572/-. If this amount deducts from the compensation amount of Rs.26,20,278/-, it comes to

Rs.1,90,706/-. It is excessive amount given to respondent no.1.

6] In view of the above, I pass the following order.

ORDER

i] Appeal is allowed.

ii] The judgment and order passed by the Tribunal is modified. Respondent no.1 is entitled for the compensation of Rs.24,29,572/- along with interest @ 6% p.a. from the date of petition till full realization. The rest of the judgment and award passed by the Tribunal is kept as it is.

iii] The appellant has deposited the entire award amount, hence, the appellant is permitted to withdraw the amount of Rs.1,90,706/- along with accrued interest thereon. Respondent no.1 is permitted to withdraw deposited amount by the appellant as per modified award.

iv] The amount deposited by the appellant be transferred to the Motor Accident Claims Tribunal, Beed. The amount which respondent no.1 is entitled, be transferred to the Motor Accident Claims Tribunal, Beed.

v] First Appeal is disposed of accordingly.

vi] In view of disposal of the Appeal, all pending Civil Applications do not survive and the same stand disposed of.

[S.G.DIGE]
JUDGE

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