IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1195 OF 2017

United India Insurance Co. Ltd.,
Through its Administrative Officer
(T.P. Hub)
Mahendra Pratapsingh Virat
Age : 49 years, occ : service
R/o Divisional Office – I, United
India Insurance Co. Ltd., Osmanpura,
Aurangabad. Appellant

Versus

1. Shrawan Pandhari Mane
Age : 37 years, occ : advocate
R/o Bodhan Nagar, Jalkot Road,
Udgir, District Latur.

2. Mohammad Nizam Abdul s/o
Hamid Bagwan
Age : major, occ : business
R/o Bagwan Galli, Udgir,
District Latur.

3. Bagwan Mohammad Ajim
Age : major, occ : business
R/o Bagwan Galli, Udgir,
District Latur. Respondents

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Mr. Swapnil S. Rathi, Advocate for the appellant.
Mr. Ram S. Shinde, Advocate for respondent No.1.
Mr. V.C. Solshe, Advocate for respondent Nos.2 and 3.

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CORAM : **SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 02.08.2022
Judgment pronounced on : 18.08.2022

Judgment:

1. Feeling dissatisfied with the judgment and award dated 12.05.2016 passed by the Member, Motor Accident Claims Tribunal, Udgir, District Latur (hereinafter referred to as, “the learned Tribunal”), in Motor Accident Claim Petition No. 48/2014, the original respondent No. 3 – Insurance Company has filed this appeal.

2. The background facts are as under :-

The present respondent No. 1 i.e. the original claimant, who is an Advocate by profession, had filed the aforesaid accident claim petition and thereby claimed compensation of Rs. 2,00,000/- from the owner, driver and Insurance Company of the motorcycle bearing registration No. MH-24-AE-9312. Before the learned Tribunal, the appellant Insurance Company contested the claim on the point of negligence on the part of the claimant alone, and that the compensation claimed by the claimant was exorbitant. The learned Tribunal was pleased to allow the claim petition by awarding compensation to the tune of Rs. 2,11,100/- alongwith interest and costs. Hence, the Insurance Company is before this Court for challenging the impugned judgment and award.

3. It appears that the appellant – Insurance Company has challenged the impugned award mainly on the two grounds viz; (i) the Tribunal awarded excessive compensation in absence of evidence as regards the income of the claimant i.e. respondent No. 1 and (ii) the disability certificate as well as damage to the motorcycle of the claimant was not proved for want of evidence.

4. So far as the disability certificate is concerned, the record shows that it is at Exh. 31, wherein permanent disability of the claimant is shown as 5%. However, a purshis at Exh.35 on record clearly shows, that it was filed by the claimant for considering the disability as 4% instead of 5%. It is extremely important to note that the learned Counsel for the Insurance Company appearing before the learned Tribunal has, in writing, made an endorsement of 'no objection' on the said purshis. Thus, now in the appeal the appellant – Insurance Company is estopped from disputing 4% disability, which has been considered by the learned Tribunal, by saying that the disability certificate was not proved by adducing evidence of the concerned. Thus, the only point which is to be considered under this appeal, is whether the learned Tribunal has granted exorbitant amount

of compensation and that too in absence of any evidence.

5. The learned Counsel for the appellant – Insurance Company vehemently argued that the claimant – respondent No.1 is an Advocate by profession and nothing has been produced by him in respect of his alleged income of Rs.25,000/- per month, except his oral statement, but still the learned Tribunal considered the income of the claimant to the tune of Rs. 25,000/- per month, even though there was nothing to substantiate the same. It is to be noted here that besides the quantum of compensation, the learned Counsel for the appellant did not raise any objection in respect of the mode of calculation of compensation. The appellant is only claiming that the compensation awarded should have been very less, specially in absence of any income proof.

6. On the contrary, learned Counsel for respondent No.1 – claimant supported the impugned judgment and submitted that the income of the claimant has been rightly taken into consideration since he is a practicing lawyer before the District and Additional Sessions Court, Udgir since 12 years.

7. I have carefully gone through the impugned judgment and award in the light of the submissions made on behalf of the contesting parties.

8. Admittedly, the claimant is a practicing lawyer having 12 years practice before the District and Additional Sessions Court at Udgir and there is only dispute about his income. It is to be noted here that the learned Tribunal has also observed that besides the evidence affidavit of the claimant, there is nothing on record to substantiate the fact that he earns Rs. 25,000/- per month. However, the learned Tribunal accepted the said income, because there was no cross-examination on that aspect. I have gone through the entire cross-examination of the claimant taken on behalf of the appellant – Insurance Company before the learned Tribunal. However, not a single suggestion was put to the claimant in the cross-examination that on what basis he was claiming that he earns Rs. 25,000/- per month. Even there is no denial to that effect. Under such circumstances, though the Code of Civil Procedure is not strictly applicable to the proceedings before the Motor Accident Claims Tribunal, but when there is no cross-examination on the income part of the claimant by the learned Counsel for the present appellant –

Insurance Company, it would go unchallenged. Even otherwise also, the income of Rs. 25,000/- per month, as considered by the learned Tribunal for a lawyer having practice of 12 years, is quite reasonable.

9. Further, the learned Counsel for the appellant – Insurance Company has not raised any objection in respect of the applicability of multiplier of "16" which is appropriate in view of the observation of the Hon'ble Apex Court in the case of ***Smt. Sarla Verma vs Delhi Transport Corporation [2009 (2) T.A.C. 690 (S.C.)]***. Moreover, rest of the amounts granted by the learned Tribunal in respect the medicines, pain and suffering and motorcycle damage, appear quite reasonable and in consonance with the documents on record. Since there is no objection from the appellant – Insurance Company in respect of the mode of calculations for computing the loss of future income in the light of 4 % disability, no fault can be found in the compensation awarded by learned Tribunal.

10. Considering the above discussed facts, I am of the opinion that there is no need to interfere with the judgment of the learned Tribunal and hence the appeal is liable to be dismissed with costs.

11. It appears that entire amount under the award has already been deposited by the appellant – Insurance Company with this Court, out of which 50% of the same appears to be withdrawn by respondent No. 1 i.e. the claimant. Thus, the remaining 50% of the deposited amount be paid to respondent No. 1 – Claimant along with accrued interest thereon.

12. In view of the above, the First Appeal is hereby dismissed with costs and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

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