IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2946 OF 2022

IN

FIRST APPEAL NO.391 OF 2022

Reliance General Insurance Co. Ltd.] … Applicant

Vs.

Mubarak Ali Hamid Sayyed & Anr.] … Respondents

…

Ms. Shalini Shankar for the applicant.

Mr. Nikhil Mehta i/b Mr. Baliram Kamble for respondent No.1.

…

CORAM : SMT. BHARATI DANGRE, J.

DATED : 06TH MAY, 2022.

ORAL ORDER. :-

1. The present appeal filed by the Insurance Company raises a challenge to the judgment and award dated 08/12/2021 passed by the Motor Accident Claims Tribunal (**“MACT”**), Mumbai, in Motor Accident Claims Petition No.1487 of 2018.

2. The appeal is filed on a limited ground, questioning the quantum of compensation awarded in favour of the Claimant and on the necessary papers being placed on record, the appeal is taken up for hearing.

3. The injured is one Mubarak Ali Hamid Sayyed, who was riding his motorcycle bearing No.MH-01-BW-434 on 26/06/2018 at 0:10 hours and was proceeding from Sion towards Dadar Station, Mumbai. When he arrived at Dadar T.T. Circle and was proceeding towards Matunga, the offending car bearing No.MH-03-AZ-4792 knocked him down from the backside. He fell on the road and sustained serious injuries. He was taken to LTMG Hospital, Sion, where he was offered treatment.

4. The aforesaid incident gave rise to general damages and compensation at the instance of the offending vehicle and the Insurance Company, with whom, the vehicle was insured. On the claim being instituted, party No.1, who is the owner of the offending vehicle, did not appear and the claim petition proceeded ex-parte against him. As far as the Insurance Company is concerned, by filing written statement, it denied the claim of the claimant and it was specifically pleaded by the Insurance Company that the driver of the offending vehicle was not holding a valid licence and it also raised a defence of contributory negligence.

5. In order to appreciate the claim and it’s veracity, the claimant examined himself as AW-1 and also examined one Birla Abraham along with Dr. Naresh Khanna, who issued the disability certificate. The Insurance Company has choosen not to examine any witnesses, but cross-examined the witnesses examined by the claimant.

6. The claimant, who stepped into the witness box narrated the manner in which the accident took place and brought on record the FIR, spot panchanama, medical papers from MCGM, his Aadhar card, etc. While narrating the manner in which the accident occurred, he has given a truthful narrative of the accident and though in the cross-examination, the Insurance Company subjected him with various cross-questions, he stood to his credibility and specifically denied the suggestion attributing any negligence to him. His cross-examination, therefore, in no way discredit his testimony in the examination-in-chief. He admits that there was a delay of 8 days in lodging the FIR, but in any case, he pleaded that the delay was not attributed to him.

7. Leela Abraham, another witness working with Mangalanand Hospital also stepped into the witness box and brought on record the original case papers of the claimant, who was admitted from 04/07/2020 to 08/07/2020. She also proved the discharge summary, the admission record and the original bills to the tune of Rs.3,80,082/-.

8. Another important witness, Dr. Naresh Khanna, who stepped into the witness box, has proved the disability certificate (Ex-38) issued by him. He deposed that the claimant sustained fracture of right tibia, fibula fracture of shaft grade III compound and was treated with debridement and external fixator. On clinical and radiological examination, he found tenderness with deformity with scaring of right leg and opined that the movement of right knee of the claimant is restricted. The certificate states that the claimant was unable to squat, climb stairs, stand or walk for long and unable to do his day-today activities. The medical expert also deposed that the claimant required future treatment and physiotherapy and his disability was assessed at 61% and issued the disability certificate. On being subjected to cross-examination, the medical expert deposed that the disability found in the claimant was occupational disability, though he has not obtained fresh X-ray while examination. His cross-examination brings on record that he was not aware as to how many spins were fixed in the leg of the claimant and he denied the suggestion that the claimant can cook the food by sitting. The suggestion given to the doctor that the claimant sustained disability on higher side has been denied by him and it was also admitted that the claimant cannot do any alternate work.

9. In the wake of the evidence that was brought before the Tribunal, the Tribunal held that the claimant had proved that he

sustained injuries in the vehicular accident and the offending vehicle was responsible for the same. I do not think there is any scope for interfering with the said order, since the Insurance Company failed to bring any evidence to show to the contrary.

10. The claimant himself has stepped into the witness box and deposed about the accident and causing the disability have not been not traversed by any independent evidence on behalf of the Insurance Company and, therefore, issue no.1 framed by the Tribunal has been answered in the affirmative that the claimant had sustained injuries on account of rash and negligent driving of the offending vehicle on 26/02/2018 at around 0.10 hours at Dadar T.T. Circle.

11. Coming to the quantum of compensation, the claimant had deposed that he was working as a cook in Mini Punjab Hotel, Sion, Mumbai, and earning Rs.20,000/- per month. However, since this happened to be a mere statement and no independent evidence was brought on record to establish his earnings, except that he was serving with Mini Punjab Hotel, the Tribunal deemed to consider his notional income at Rs.6,000/- per month. On examining the injury sustained by the claimant personally as well as on going through the photographs along with disability certificate, the Tribunal accepted the disability of the claimant to be 61% and by applying the multiplier method, derived at an amount of compensation for the disability and loss of future

prospect at Rs.7,46,640/-. On examining the medical evidence brought on record, where the claimant was treated by debridement and external fixator and that the external fixator and screws/spike came to be removed from right leg only in the year 2020, the Tribunal deemed it fit to grant him an amount of Rs.5,00,000/- towards pain and suffering. For conveyance and special diet, an amount of Rs.25,000/- and Rs.10,000/- respectively were granted. As far as the loss of expectancy of life is concerned, considering the nature of injures and percentage of disability, an amount of Rs.3,00,000/- was awarded along with Rs.10,000/- towards physiotherapy and attendant charges. The total amount of compensation awarded by the Tribunal to the claimant was Rs.21,08,409/-.

12. On perusal of the various heads, on which the compensation was awarded, I do not find any legal infirmity in the order. Though the learned counsel for the appellant has vehemently argued that there was only 61% disability, the amount awarded under the head 'loss of expectancy of life' at Rs.3,00,000/ is exorbitant, I do not agree with the said argument because when a person who has suffered injuries in an accident deserves to be compensated not only for his physical injury suffered, but also for the mental trauma, which he had undergone during the period of treatment. Monitory compensation is not sufficient to deal with the pain and suffering, but it only offers some solace to the person, who has undergone the pain and suffering in an accident, leaving

him with physical as well as mental trauma. Therefore, the amount of Rs.3,00,000/- awarded for loss of expetency of life, cannot be said to be exorbitant. The medical expenses are concerned, which are to the tune of Rs.5,16,769/-, it also does not warrant any interference, since the disability and loss of future prospect have been computed by taking the notional income of the claimant to be Rs.6,000/- per month and his age as 29 years, the amount has been rightly arrived at.

13. The learned counsel for the appellant also asseverate that there is a delay in lodging the FIR, but the said argument is just mentioned to be rejected, because in an accident, there can always be a delay in lodging the FIR, but in any case, the compensation awarded under a special statute is not dependent upon the outcome of the investigation of a crime, which is registered pursuant to the offence being registered when the accident took place.

14. In the wake of the aforesaid circumstances, no legal infirmity is found in the impugned order and by upholding the same, the appeal is dismissed.

15. Since it is informed that the amount of compensation awarded is not deposited, the Insurance Company shall deposit the same along with interest within eight weeks from today before the Tribunal. Upon such deposit being made, the same shall be appropriated by the claimant.

16. The statutory deposit of Rs.25,000/- deposited in this court shall be remitted to the Tribunal, to be appropriated by the Insurance Company.

17. In view of the disposal of the appeal, the interim application does not survive and is disposed off as such.

[SMT. BHARATI DANGRE, J.]