BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.699 OF 2016

IFFCO TOKIO GENERAL INSURANCE	)	
CO. LTD, Thane Divisional Office	)	
Shripal Complex Nitin Company,	)	
Thane.	)	
Present Address: AFL House 2nd Floor	)	
Lokbharti Complex, Marol Maroshi	)	
Road, Andheri (East), Mumbai-400059	)	…. Appellant.
	(Orig. Opponent No.4.)	

V/s

1] Shri Naushad Ahamed Zahir Shah	)	
Aged about 24 years, R/at Shivaji Nagar	)	
Govandi, Baigan Wadi, Mumbai.	)	
	)	
2] M/s Venkatesh Logistics Pvt. Ltd.	)	
Room No.07 Nand Niketan Shopping	)	
Complex, Essar Township, Hazira	)	
District Surat, State Gujrath	)	
(Owner of Truck No.GJ-05/YY-8570)	)	
	)	
3] The Reliance Gn. Insurance Co.Ltd.	)	
Reliance Centre 19, Hirachand	)	
Walchand Marg, Ballard Estate	)	
Mumbai -1.	)	
	)	
4] Shri Ramnarayan Subhedar Singh	)	
Ghyandeep CHS, B-1/3/13,	)	
Sector No.10, Sanpada, Navi Mumbai	)	
Dist. Thane (Owner of Tanker	)	
No.MH-43/E-778)	)	Respondents.

ALONGWITH
FIRST APPEAL (ST) NO.26987 OF 2015

Reliance General Insurance Co. ltd. Through its Manager, Mr. Amit Ashwini Sharma, having its office at 4th Floor Chintamani Avenue Off Western Express Highway, Near Virwani Industrial Estate Goregaon (East), Mumbai 400063	)	…. Appellant. (Ori. Opp. Party No.2)
V/s		
1] Shri Naushad Ahamed Zahir Shah Aged about 24 years, R/at Shivaji Nagar Govandi, Baigan Wadi, Mumbai.	)	
2] M/s Venketesh Logistics Pvt. Ltd. Room No. 07 Nand Niketan Shopping Complex, Essar Township, Hazira District Surat, State Gujrath	)	
3] Shri Ramnarayan Subedar Singh Ghyandeep CHS, B-1/3/13, Sector No.10, Sanpada, Navi Mumbai Dist. Thane	)	
4] The Iffco-Tankio General Insurance Co. Ltd., Thane Divisional Office Shripal Complex, Nitin Company,Thane	)	…… Respondents.

ALONGWITH
CIVIL APPLICATION NO.2753 OF 2019
(For withdrawal of amount deposited in MACT)

IN
FIRST APPEAL NO.699 OF 2016

Shri Naushad Ahamed Zahir Shah .... Applicant

In the matter between

IFFCO TOKIO General Insurance Company Limited. .... Appellant

V/s

Shri Naushad Ahamed Zahir Shah and Ors. .... Respondents.

ALONGWITH
CIVIL APPLICATION NO.1671 OF 2016
(For stay)
IN
FIRST APPEAL NO.699 OF 2016

IFFCO TOKIO General Insurance Company Limited. .... Appellant

V/s

Shri Naushad Ahamed Zahir Shah and Ors. .... Respondents.

ALONGWITH
CIVIL APPLICATION NO.1606 OF 2016
(For stay)
IN
FIRST APPEAL (ST) NO.26987 OF 2015

Reliance General Insurance Co. Ltd. .... Applicant

V/s

Shri Naushad Ahamed Zahir Shah and Ors. .... Respondents.

Ms. Jyoti Bajpayee for the Appellant in FA/699/2016.
Mr. Rajesh Kanojia @ Riddhi Chavan i/b Res Juris for the Appellant in FA(ST)/26987/2015
Ms. Rina Kundu for Respondent No.1 in both the above Appeals.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 05, 2022

JUDGMENT:

1] Both these Appeals by consent of parties are tagged and heard together.

2] These Appeals are arising out of the Award delivered by the District Judge-7 and Additional Member, MACT, Thane in the matter of Shri Naushad Ahamed Zahir Shah vs. M/s Venketesh Logistics Pvt. Ltd and 3 others.

3] Appellant-Reliance General Insurance Company Ltd was Opponent No.2 and and the Appellant-Iffco Tokio General Insurance Co. Ltd was Opponent No.4 to the claim Petition. Proceedings were taken out by Respondents-claimant viz Naushad Ahamed Zahir Shah with allegations that on 31/01/2009 at about 4.30 P.M while he was discharging his duty as cleaner on Motor Tanker bearing

No. MH-43-E-778, the said Tanker was driven in a rash and negligent manner. As a consequence, the said Tanker dashed against stationery Motor Trailler bearing No.GJ-5-YY-8570.

4] As a consequence of the aforesaid accident, the claimant claimed to have suffered serious injuries and as such he was removed to rural hospital and thereafter shifted to Siraj Hospital Bhiwandi for treatment. The owners of both the vehicles were proceeded ex parte before the Tribunal, so also remained absent before this Court.

5] The Appellant-Reliance General Insurance Co. Ltd resisted the claim vide Written Statement at Exhibit-31 and the other Appellant-Iffco Tokio General Insurance Co. Ltd vide Written Statement at Exhibit-33. Issue as regards whether the claimant suffered permanent disablement due to rash and negligent driving of Tanker was held to be proved and the following directions came to be issued viz. Appellant- Reliance General Insurance Co. Ltd with the owner of the vehicle was jointly and severally held to be liable and also Appellant-Iffco Tokio General Insurance Co. Ltd with the owner of the vehicle was also held to be jointly and severally liable with 50% of the liability each. The operative part of the said judgment reads as **under:-**

"**ORDER**

[i] Application is allowed.

[ii] Opponent Nos. 1 and 2 jointly and severally liable to pay compensation of Rs 3,23,500/- (Rupees Three Lac Twenty Three Thousand Five Hundred Only) (including NFL amount of Rs 25,000/-) to the applicant with interest of 7% pa. from the date of filing of petition till its realization.

(iii) Opponent Nos. 3 and 4 jointly and severally liable to pay compensation of Rs 3,23,500/- (Rupees Three Lac Twenty Three Thousand Five Hundred Only) (including NFL amount of Rs 25,000/- to the applicant with interest of 7% pa. from the date of filing of petition till its realization.

[iv] On realization of the amount, total amount of Rs 6,47,000/- (Rupees Six Lac Fourty Seven Thousand Only) be handed over to the applicant along with interest thereon by way of A/c payee cheque from the date of filing of petition till realization.

[v] The amount of interim compensation of Rs 25,000/- if already withdrawn by the applicant, be

adjusted out of the said amount of compensation.

[vi] The applicant hall pay court fees to the extent of excess amount of compensation awarded to him.

[vii] Award be drawn up accordingly."

6] Both the Insurance Companies while questioning the aforesaid award urged that claim was initially preferred under Section 166 of the Motor Vehicles Act (For short "M.V. Act") Subsequently, the claimant converted the said proceedings into one under Section 163-A of the M.V. Act. Under Section 163-A of the M.V. Act, claim is maintainable only in case if annual income of the claimant is less than Rs 40,000/-. According to them, Tribunal committed an error in entertaining the proceedings and awarding compensation by considering notional income of the claimant at Rs 5000/- per month i.e. annual income of Rs 60,000/-. It is further claimed that even though initially proceedings were preferred under Section 166 of the M.V. Act., once the same were converted to be one under Section 163-A of the M.V. Act, Tribunal is duty bound to decide the same under the later provision by considering income less than Rs 40,000/-.

7] Counsel appearing for Reliance General Insurance Company Ltd would also urge that there was breach of policy and as such, Appellant cannot be held responsible. Similarly, Counsel for Iffco Tokio General Insurance Co. Ltd would urge that vehicle which was stationery (Motor Trailer) was insured with the Appellant. There is no finding that the said Tanker was unlawfully parked which led to accident and still the said Tanker owner and the Appellant-Insurance Company are held to be liable.

8] While countering the aforesaid submissions, Counsel for the claimant would urge that, she has no objection to consider the claim in the present Appeals to be one under Section 163-A of the unamended M.V. Act. She would urge that if this Court can decide the matter here, Respondent No.1 will forgo his annual earning and restrict his claim to Rs 3300/- per month of earnings. In addition, her contentions are considering disability caused because of injuries, the claimant has suffered 100% loss of earning which the Tribunal has failed to consider. As such, she has sought enhanced compensation.

9] I have considered the aforesaid submissions.

10] It appears that and rightly so pointed out by the Counsel for the Appellant that the Award is delivered by entertaining Claim Petition preferred under Section 163 of the M.V. Act. Even in the impugned judgment, particularly in para 11, the Tribunal was sensitive to the fact that Claim Petition is preferred under Section 163-A of the M.V. Act. However, Tribunal while doing so in para 15 has recorded a finding that notional income of the claimant has to be considered as Rs 5000/- per month i.e. Rs 60,000/- per annum. The said consideration by the Tribunal, in my opinion, goes contrary to the very claim under Section 163-A of the M.V. Act. Apart from above, claim of the Appellant- Iffco Tokio General Insurance Co. Ltd that insured vehicle i.e. stationery Tanker cannot be held responsible is not at all dealt with. Apart from above, claimant has also sought enhanced compensation by canvassing that there is 100% loss of earning.

11] In the light of aforesaid observations, case for remand is made out. The award impugned delivered by the Claims Tribunal on

06/05/2015 is hereby quashed and set aside. Counsel for the Appellants and Claimant assure that they shall appear before the Tribunal on 22nd August, 2022 and Tribunal shall proceed ahead with hearing of the Claim Petition on its own merit and decide the same expeditiously and in any case by 21/11/2022.

12] Needles to clarify that it shall be open for the Claimant to convert the Claim Petition to one under Section 166 of the M.V. Act from Section 163-A of the M.V. Act.

13] Both these Appeals stand partly allowed in the aforesaid terms.

14] Entire amount deposited shall be transferred to the Claims Tribunal in the pending Claim Petition with accrued interest thereon.

16] In view of disposal of appeals, nothing survives in the above Civil Applications and they are also disposed of.

(NITIN W. SAMBRE, J.)