IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO.712 OF 2017

APPELLANT : Govindsingh Surendrasingh Thakur
(Claimant on R.A.)
Aged about 36 years, Occ-Nil,
r/o. Rajeshwar State Bank Colony,
Gaurakshan Road, Akola, Tq. and Dist. Akola

//VERSUS//

RESPONDENTS : **1.** Shri Vinodkumr Ramesh Chandan,
(On R.A.)
aged about 37 years, Occ-Driver and
owner of the truck, r/o. Damale Chowk,
Akola. Present address, Asara Colony,
Malkapur Road, Akola, Tq. and Dist. Akola.

Correct Address of R.No.1

Amendment carried out as per Registrar's (Judicial) order dated 1/08/2017)

Shri Vinodkumr Ramesh Chandan,
R/o Tarfail, Bhavani Peth, Galli No.4,
Behind Factory owned by Shri Mohan Yeole,
Akola, Tq. & District Akola

2. Shriram General Insurance Company Ltd.
Through its Branch Manager, 10003-E-8,
Rico. Industrial Area Sitapura, Jaipur
(Rajasthan) 302022.

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Mrs. S.W. Deshpande, Advocate for the Appellant.
Shri H.N. Verma, Advocate for Respondent No.2.
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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 23rd FEBRUARY, 2022.

ORAL JUDGMENT

01] This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act") challenging the judgment and Award dated 30/11/2016 in Claim Petition No.147/2014. By the impugned judgment, the Claims Tribunal has partly allowed the Petition under Section 166 of the said Act and directed the Respondent Nos.1 and 2 to pay to the Claimant compensation of Rs.5,82,800/- with interest @ 7% per annum from the date of the petition till final realization.

02] The brief facts necessary to decide this Appeal are as under:

The Appellant (hereinafter referred to as "the Claimant"), had filed Petition under Section 166 of the said Act alleging that he had sustained grievous injuries resulting in permanent disability of 40% in a motor vehicular accident involving Truck bearing No.MH-12-FA-8750. The Claimant had alleged that the accident was caused due to rash and negligent driving by the Respondent No.1 – Driver of the offending vehicle. The Claimant had alleged that at the time of the accident, he was 30 years of age and was earning Rs.70,000/- per month as a truck driver. The Claimant had further alleged that he was hospitalized and that he had incurred medical expenses of Rs.1,32,439/-. He therefore claimed total compensation of Rs.1,01,32,439/- under various heads.

The Respondent Nos.1 and 2 denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondent Nos.1 and 2 also claimed that the Claimant had not suffered permanent disability of 40%. The Respondent Nos.1 and 2 claimed that the claim was exorbitant and thus denied their liability to pay any compensation to the Claimant.

The Tribunal, after considering the evidence on record, held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle which was duly insured with the Respondent No.2 – Insurance Company. The Tribunal has also recorded a finding that the Claimant has failed to prove that he was earning Rs.70,000/- per month. As regards the quantum of compensation, the Tribunal has considered the notional income of the deceased at Rs.5,000/- per month. The Tribunal has also considered the permanent disability to the extent of 40% and computed future loss of income to Rs.4,08,000/-. The Tribunal has also awarded compensation on other heads such as medical bills, permanent disability etc. and awarded total compensation of Rs.5,82,800/-. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Claimant has filed this Appeal.

03] Mrs. Deshpande, learned counsel for the Claimant submits that the Tribunal has grossly erred in computing the compensation on the basis of notional income of Rs.5,000/-. She submits that the Claimant was working as heavy vehicle driver, and that the minimum wages at the relevant time for skilled labourer was Rs.8,000/-. She further submits that the Claimant had incurred medical expenses of Rs.1,32,439/-. Despite which, the Tribunal has awarded only an amount of Rs.94,800/-. She further submits that the Claimant is unable to work as a driver. She contends that the nature of the injuries and the extent of permanent disability have caused functional disability of 100%. She, therefore, states that the compensation awarded by the Tribunal needs to be enhanced.

04] *Per contra*, Shri Verma, learned counsel for the Respondent No.2 – Insurance Company submits that the Claimant has not proved that he was employed as a driver. He submits that the minimum wages for skilled labourer as on the date of the accident was Rs.5,000/- per month. He further submits that the Claimant has not proved the extent of permanent disability. He submits that the certificate at Exh.45 was not issued by the Orthopedic Surgeon and that the said certificate is issued without any basis. He therefore submits that there is absolutely no evidence to prove that the Claimant was employed as a driver and that he had suffered functional disability of 100%.

05] I have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

06] It is to be noted that the Claimant was 30 years of age as on the date of the accident. He had stated that he was employed as a Truck driver with J.K. Builders. He had further deposed that he was getting Rs.25,000/- per month and in addition he was getting *Bhatta* charges of Rs.500/- per day. He was also getting other income from passengers and luggage income which was approximately Rs.1,000/- per day. The Claimant therefore claimed that he was earning Rs.70,000/- per month. The Claimant had produced the certificate at Exh.36 issued by one Rajendrasingh Oberoi, the owner of J.K. Builders.

07] It is to be noted that the Claimant had not examined the employer or any other witness to prove the certificate which is at Exh.36. He had also not produced any other documentary evidence to prove that he was earning Rs.70,000/- per month. On the contrary, he has admitted in his cross-examination that he had worked as a driver for about 1½ year from 2008 to 2009. The accident was in September, 2010. There is absolutely no evidence on record to indicate that as on the date of the accident, the deceased was employed with J.K. Builders. Under the circumstances, the Claimant had failed to prove that he was earning Rs.70,000/- per month. It was under these circumstances that the Tribunal has assessed the loss of future income on the basis of notional income of Rs.5,000/-, which was the income of minimum wages for skilled workers in Zone-3. Hence, the

Claimant has not made out any case for increasing the notional income.

08] The evidence on record reveals that the Claimant was admitted in Ozone Hospital, Akola from 11/09/2010 to 20/09/2010. The evidence of CW-3 Dr. Shirish Ambekar reveals that the Claimant had fracture of lateral condyle of right femur which was stabilized by internal fixation. He has stated that the Claimant had undergone surgery of knee and muscle injuries. He has further stated that the Claimant had suffered permanent disability of 40%. The evidence on record reveals that the Claimant had suffered fracture. Relying upon the medical records and the evidence of CW-3 Dr. Shirish Ambekar, the Tribunal has held that the deceased had sustained grievous injuries resulting in permanent disability of 40%. There is no challenge to these findings.

09] The Claimant had produced the medical bills at Exhs.38/1 to 38/163, which indicate that the Claimant had incurred medical expenses of Rs.1,00,500/-. However, the Tribunal has awarded compensation of Rs.94,800/-. The Tribunal has not assigned any reason for deducting Rs.5,700/- from the medical expenses. The Claimant is therefore entitled for medical expenses of Rs.1,00,500/-. Considering the nature of injuries sustained in the said accident and the treatment taken, the Claimant would be entitled for actual loss of income for a period of three months. The Claimant is unmarried. Considering this fact, the compensation towards loss of marriage prospects can be enhanced by another Rs.20,000/- with further compensation of Rs.20,000/- towards loss of amenities in life. Thus, in addition to the compensation awarded by the Tribunal, the Claimant is entitled for compensation of Rs.15,000/- towards actual loss of income, additional amount of Rs.6,000 towards medical expenses, additional amount of Rs.20,000/- towards loss of marriage prospects and Rs.20,000/- towards loss of amenities in life. The Claimant is therefore entitled for total compensation of Rs.6,43,500/-, which is rounded up to Rs.6,45,000/-.

10] Under the circumstances, the following order is passed:-

(a) The Appeal is allowed.

(b) It is held that the Claimant is entitled for compensation of Rs.6,45,000/- with interest @ 7% per annum from the date of the petition till final realization.

(c) The Respondent No.2 – Insurance Company to deposit the balance amount within a period of three months.

The Appeal stands disposed of in above terms. Pending application(s), if any, stand(s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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