IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2884 OF 2015

United India Insurance Company Ltd.,
Through its Administrative Officer,
Shri. Mahendra Pratapsinh Virat,
Age: 49 yrs, Occ: Service,
R/o. Divisional Office – I
Osmanpura, Aurangabad … Appellant
(Ori. Resp. No.2)

Versus

1) Vijay s/o Bhaskar Patil,
Age: 33 years, Occu: Service,
R/o. H.No.14, Ramdas Colony,
Jalgaon, Dist. Jalgaon.

2) Mukesh Vasumal Keshwani,
Age: Major, Occ: Business,
R/o. Pachora, Tq. Pachora
Dist. Jalgaon. …Respondents
(Resp. No.1 Ori. Claimant
Resp. No.2 Ori. Resp. No.1)

…

Mr. Swapnil Rathi, Advocate for Appellant
Mr. Vijay B. Patil, Advocate for Respondent No.1

...

WITH
CROSS OBJECTION NO.04 OF 2022
IN FIRST APPEAL NO.2884 OF 2015

Vijay Bhaskar Patil,
Age: 51 Years, Occu: Service
R/o:- H.No.14, Ramdas Colony,
Jalgaon, Dist. Jalgaon … Appellant
(Orig. Claimant)

Versus

1) Mukesh Vasumal Keshwani,
Age: Major, Occ: Business,
R/o. Pachora, Tq. Pachola
Dist. Jalgaon.

2) United India Insurance Company Ltd.,
Mansing Market, 2nd Floor, …Respondents
Jalgaon, Dist. Jalgaon. (Orig. Respondents)

...
Mr. Vijay B. Patil, Advocate for Appellant
Mr. Swapnil Rathi, Advocate for Respondent No.2
...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 13th DECEMBER, 2023
PRONOUNCED ON : 20th DECEMBER, 2023

ORDER :

1. This first appeal challenges judgment and award dated 12/03/2015, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No.07/2004, thereby partly allowing claim petition filed by respondent No.1/claimant.

2. Respondent No.1/claimant has filed cross objection seeking enhancement of compensation awarded by the Tribunal.

3. Brief facts leading to this First Appeal and Cross Objection can be stated as follows:-

Claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, contending that on 04/05/2002, at about 03:30 p.m., while he was returning from his work on his motorcycle bearing No.MH-19-N-2468, at about 04:15 p.m., a truck bearing No.MH-19-5703 was there in front of his motorcycle going towards Jalgaon. On ascending slope, the truck suddenly started coming back in reverse and dashed motorcycle of claimant and the wheels of truck went over his both legs. He was seriously injured and admitted in the hospital of Dr. Nahata from 04/05/2002 to 22/06/2002. His left leg was amputed and he incurred medical expenses of Rs.90,000/- and other expenses of Rs.2,000/-. At the time of accident he was 32 years old and was working with Jain Irrigation Company Limited, Jalgaon, as Supervisor and was earning Rs.6,000/- per month. He, therefore, claimed compensation of Rs.4,00,000/-, as accident occurred due to negligence of truck driver.

4. Respondent No.2/owner of the truck, opposed claim petition by filing written statement, contending that some other vehicle gave dash to claimant’s motorcycle from behind and due to that he has dashed the truck owned by respondent No.2.

5. Appellant/Insurance Company by filing written statement denied the contentions in claim petition. It is contended that respondent No.2/owner of truck had given cheque towards premium of insurance for the period from 18/03/2002 to 17/03/2003 to Insurance Company’s agent. Believing that the cheque will be honoured, agent issued cover note. When the said cheque was deposited for encashment, it was dishonoured. Thereafter, Insurance Company cancelled the policy and informed it to respondent No.2. Therefore, there was no contract of insurance between respondent No.2/truck owner and appellant/Insurance

Company on the date of accident. The vehicle was not insured on the date of accident.

6. In support of his claim, claimant examined himself and relied on following documents:-

1) Copy of statement of claimant (Exh.30)
2) Copy of spot panchanama (Exh.31)
3) Copy of cover note (Exh.32)
4) Latter dated 22.12.2003 (Exh.33)
5) PDC (Exh.34)
6) Injury certificate (Exh.39)
7) Medical bill (Exh.40)
8) Medicines prescribed bills (Exhs.41/1 to 41/27)

7. Claimant also examined Dr. Nahata, who had treated the claimant. After assessing evidence the Tribunal partly allowed claim petition and awarded compensation of Rs.3,76,169/- along with interest at the rate of 7.5% per annum from the date of claim petition till realization of amount.

8. Heard learned advocates for the respective parties.

9. Learned advocate for appellant/Insurance Company assailed impugned judgment and award contending that Tribunal has failed to give fair opportunity to Insurance Company to lead evidence to show that there was no valid insurance policy, hence, Insurance Company is not liable to pay compensation. By relying on

application Exhibit-45 filed by Insurance Company before the Tribunal, it is submitted that though application was moved seeking permission to lead evidence, the same was rejected by Tribunal and therefore, impugned judgment and award is vitiated.

10. Learned advocate for respondent No.1/claimant, on the other hand, supported the impugned judgment and award to the extent it awards compensation, but according to him Tribunal has awarded inadequate compensation. He submits that Tribunal has erred in holding that monthly income of claimant was Rs.3,000/-. He submits that claimant has deposed that he was serving as Supervisor in Jain Irrigation Company Ltd. and was drawing salary of Rs.6,000/- per month. Tribunal ought to have held that salary of claimant was Rs.6,000/- and ought to have awarded compensation on that basis. He further submits that Tribunal has also erred in holding that claimant has suffered only 50% disability when the evidence on record indicates that claimant has suffered 62% permanent disability. He, therefore, submits that his cross objection may be allowed and compensation awarded by the Tribunal be enhanced.

11. I have duly considered the rival submissions. Perused the record.

12. It is a matter of record that sufficient opportunity was

given to appellant/Insurance Company to lead evidence in support of it's case that cheque issued by truck owner/respondent No.2 towards insurance premium was dishonoured and insurance policy was cancelled and said fact was informed to truck owner/ respondent No.2. It is clear from record that, in spite of granting sufficient opportunity to lead evidence Insurance Company has failed to lead evidence to prove the same.

13. Insurance Company filed application Exhibit-45 seeking permission to lead evidence at the fag end of trial, when the matter was listed for arguments. Claim petition is filed in the year 2004 and application Exhibit-45 is filed at the stage of arguments on 12/03/2015. Tribunal has rightly rejected the said application by giving proper reason. Therefore, contention of appellant/Insurance Company that no fair opportunity to lead evidence was given to it, is devoid of merit.

For the aforestated reasons, finding recorded by Tribunal that, "*As regards liability of the insurance company, though it is contended by the insurer that the cheque was dishonoured, however, no evidence has been led in that regard. Although the matter was quite old, insurance company was granted several opportunities to lead evidence, however, they were not availed of.*", is liable to be affirmed.

14. In FIR Exhibit-30 lodged on 05/05/2002 i.e. immediately after the accident, claimant has stated that since last seven years he is serving as Supervisor at Jain Udyog Samuh. It is further stated that, on 04/05/2002 claimant worked in morning shift from 07:00 a.m. to 03:40 p.m. at Jain Udyog Samuh. After finishing his duties, he proceeded to home by his vehicle. Claimant has also deposed that he was working as Supervisor with Jain Udyog Samuh and was drawing salary of Rs.6,000/- per month. Insurance Company has not seriously disputed that claimant was working as Supervisor with Jain Udyog Samuh and that he was drawing salary of Rs.6,000/- per month. In cross-examination, only a suggestion was given to claimant that he was not drawing salary of Rs.6,000/-. Considering the fact that claimant was working as Supervisor, salary of claimant at the rate of Rs.6,000/- per month needs to be taken into consideration while calculating compensation amount. Tribunal has erred in holding notional income of claimant at the rate of Rs.3,000/- per month.

15. By leading evidence of Dr. Nahata, who has treated claimant, injury certificate Exhibit-39 is proved. Dr. Nahata has specifically stated in his evidence that claimant is not in a position to work as earlier. Injury certificate Exhibit-39 issued by Civil Surgeon, Jalgaon, shows that claimant has suffered permanent

disability of 62%. There is sufficient evidence on record to show that left leg of claimant was amputated and he has suffered serious injuries to both the legs. In spite of this evidence on record Tribunal has proceeded to hold that, *"….. considering the nature of disability, which is amputation of leg below knee, disability can be assessed at 50%. In view of the nature of work of the petitioner, the functional disability of the petitioner cannot also be assessed more than 50%"*. In the light of injury certificate Exhibit-39, Tribunal has erred in holding that disability has to be assessed at 50%. The said finding is, therefore, unsustainable.

16. Having regard to the above discussion, compensation is required to be reassessed as follows:-

Rs.6,000/- x 12	= Rs.72,000/-
(Rs.72,000/- x 16)	= Rs.11,52,000/-
less 1/3rd	= <u>Rs.3,84,000/-</u>
	= Rs.7,68,000/-
Other expenses	+ Rs.2,000/-
Pain and sufferings	+ Rs.25,000/-
Medical expenses	+ <u>Rs.61,169/-</u>
Total	= **<u>Rs.8,56,169/-</u>**

17. In the result, first appeal is dismissed. Cross objection is partly allowed. By holding monthly income of claimant at Rs.6,000/- per month and considering 62% permanent disability, claimant is held entitled for compensation of Rs.8,56,169/- along

with interest at the rate of 7.5% per annum from the date of filing of claim petition, to be recovered from appellant/Insurance Company and respondent No.2/truck owner jointly and severally. Award be drawn accordingly.

18. In view of dismissal of First Appeal, amount of compensation deposited by appellant/Insurance Company along with accrued interest be paid to claimant.

(NITIN B. SURYAWANSHI, J.)