



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.69 OF 2021

Cholamandal MS General Insurance
Company Limited

...Appellant.

Versus

Pravin Prakash Sawant and Anr.

...Respondents

...

Mr. Nitesh Bhutekar with Mr. Aniket Nangare for the Appellant.
Mr. T.J. Mendon for the Respondent -Claimant.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th AUGUST, 2023.

P. C. :-

1. With consent of the parties, heard finally at the stage of admission.
2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the Appellant -Insurance Company assailing the Judgment and Award dated 17/09/2019 passed by the learned Member, M.A.C.T., Thane, in M.A.C.P No.697 of 2016.
3. By the impugned Judgment and Award, the Claims Tribunal allowed the Claim Petition filed by Respondent No.1 under

Section 166 of the Motor Vehicles Act and awarded compensation of Rs.9,14,829/- with interest @ 7% per annum.

4. Respondent No.1 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 in view of the injuries sustained by him in motor vehicular accident on 18/06/2015 involving vehicle bearing No.MH-04 /EB-2511, which was insured by the Appellant-Insurance Company.

5. It is the case of the Respondent No.1-Claimant that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. Respondent No.1 further claimed that he was 27 years of age and was working as a Fork Lift Operator with Prism Facilities Management Services, and earning salary of Rs.15,073/- p.m. He claimed that he had sustained permanent disablement on account of the injuries sustained in the said accident. He therefore sought compensation from the owner and the insured of the offending vehicle.

6. The Tribunal upon considering the nature of the injuries, the extent of permanent disablement as well as the age and income of

the Respondent No.1 and other relevant factors, awarded compensation of Rs.9,14,829/ with interest 7% per annum. Being aggrieved by the said Judgment and Award, the Appellant-Insurance Company has filed this appeal.

7. Heard Mr. Bhutekar, learned counsel for the Appellant and Mr. T.J. Mendon, learned counsel for Respondent No.1. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The records reveal that Respondent no.1 had sustained injuries in an accident on 18/06/2015 involving vehicle bearing Registration No.MH-04/EB-2511, which was duly insured by the Appellant-Insurance Company. The Tribunal has already recorded finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. There is no challenge to this finding. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable.

9. The evidence on record reveals that Respondent No.1-injured was 26 years of age. The evidence of the injured vis-a-vis the

evidence of AW5-Abhishek proves that Respondent No.1 was serving as a Fork Lift Operator in M/s. Prism Facility Management. AW5 has placed on record salary slips for the month from March-2015 till May-2015 at Exhibit -68, A perusal of the salary slips at Exhibit-68 reveals that the income of the injured on an average was over Rs.15,000/- per month.

10. The evidence of Respondent No.1 and evidence of AW-3 Dr. Mohadish Mohim Muskan Khan vis-a-vis injury certificate at Exhibit-44 and other medical records reveal that Respondent No.1 was admitted in Prime Hospital, Bhiwandi on 18/06/2015 in view of the injuries sustained in the motor vehicular accident. He had suffered injuries (Medial Malleolus of Left Ankle Joint Fracture, internal injury to Right Thigh (Hematoma), CLW over on left eye brow 3x2x1 cms, Abrasions over Right and Left Foot and other injuries. He was operated and open reduction internal fixation of medial maleolous done with 2-k wire or hematoma right thigh was surgically drained. He was discharged on 25/06/2015. He was once again admitted to Gadhe Hospital, Mohopada Khalapur, District- Raigad on 23/08/2015 in view of infection to the right thigh injury, surgery of incision and drainage was performed on 23/08/2015 and

he was discharged on 24/08/2015.

11. The Evidence of Dr. Rajesh Desai reveals that he had examined Respondent no.1 Claimant for assessment of permanent disability. This witness has deposed that Respondent No.1 was radiologically examined. The physical examination as well as the medical reports revealed that there was restriction to the left ankle movement by 25%. The doctor has assessed the permanent disability to 35%. The evidence of AW4 vis-a-vis the injury certificates at Exhibits 49 and 50 prove that the Respondent No.1 has sustained partial permanent disablement of the left lower limb (ankle) is assessed at 35% and that of the right lower limb (hip joint) is 21%.

12. The statement of this witness as regards the nature of permanent disablement as well as extent of disablement has gone unchallenged. In fact there is absolutely no cross examination on this aspect. Hence, there is no reason to disbelieve the evidence of AW4, which clearly indicates that Respondent No.1 sustained permanent disability to left lower limb and right lower limb of 35% and 21% respectively.

13. The learned Judge has considered the age of Respondent No.1 as 26 and considered the income of Respondent No.1 at Rs.14,662/- per month. Considering the nature of work vis-a-vis the nature of the injuries and permanent disablement, the Tribunal has considered the functional disability at 25%. Applying multiplier of 17, the Tribunal has assessed loss of income at Rs.7,47,762/- in addition the Tribunal awarded compensation of Rs.1,32,067/- towards medical expenditure, Rs.25,000/- towards pain and suffering and Rs.10,000/- towards special diet and conveyance. Thus, the Tribunal has awarded Rs.9,14,829/-, which in my considered view is just and reasonable.

14. Under the circumstances and in view of the discussion, supra, the appeal has no merits and is accordingly dismissed.

15. The statutory deposit be transferred to the Claims Tribunal-Thane.

16. The compensation deposited by the Appellant -Insurance Company be paid to Respondent No.1-Claimant alongwith the interest accrued thereon.

(SMT. ANUJA PRABHUDESSAI, J.)