IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.300 OF 2023

Reliance General Insurance Co. Ltd. Chintamani Avenue, 4th Floor, Opp. Virwani Industrial Estate, Off. Western Express Highway, Goregaon East, Mumbai – 400063	]]]]]	Appellant
Versus		
1. Manish Mansukhbhai Chauhan Residing at A Wing-201, Yash Krupa, Shimpoli Road, Behind Link Road, Borivali (W), Mumbai- 400092	]]]]]	Original Applicant
2. P.W.G.Jv Residing at 203-A, Gokul Archade, Swami Nityanand Marg, Vile Parle East, Mumbai-400057	]]]	Respondents

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Ms. Shalini Shankar, Advocate for the Appellant
Mr. Saumen S. Vidyarthi a/w. Ms. Ishita Bhole and Mr. Mohit Turakhia, Advocate for Respondent No.1.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 12th DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are income of the respondent No.1/claimant is considered on higher side and there was contributory negligence of the respondent No.1/ claimant.

2. It is the contention of learned counsel for the appellant/Insurance Company that accident was caused due to contributory negligence of respondent No.1/claimant but this fact is not considered by the Tribunal and has awarded excessive compensation. Learned counsel further submitted that the Tribunal has considered annual income of claimant/respondent No.1 at Rs.4,81,000/- per month without any evidence. The claimant has got 65% disability. Learned counsel further submitted that the Tribunal has awarded compensation on higher side under various heads hence requested to allow the appeal.

3. It is the contention of learned counsel for respondent No.1/claimant that to prove the contributory negligence of the claimant no witness was examined by the appellant/Insurance Company. The claimant was riding motorcycle at that time the offending dumper gave him dashed from the opposite direction. Learned counsel further submitted that the claimant was doing mason by vocation and he used to get big contracts for repair, renovation, interior designing of homes. He used to earn Rs.10,00,000/-per annum. The income tax returns are filed on record which shows his income was more than Rs.6,00,000/- per annum but the Tribunal has awarded Rs.4,81,000/- per annum only. The claimant has no objection about it. Learned counsel further submitted that while awarding compensation the Tribunal has considered all the aspects on that basis the order is passed which is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). It is claimant's case that on 12.06.2015 he was riding motorcycle and was proceeding on Western Express Highway. When he reached near Shantaram Talao in front of Omkar building, Malad (East) at that time the offending BMC cleanup dumper No.MH-02-CE-8453 came at a fast speed, in a rash and negligent manner and dashed to the motorcycle of the claimant. Due to said dash claimant had suffered serious injuries. The claimant has suffered 65% disability due to the said accident. The offence was registered against the driver of tempo/dumper. To prove the contributory negligence of respondent No.1/claimant, appellant has not examined any witness. Hence, I do not see merit in the contention that there was contributory negligence of the claimant. To prove the income of claimant he has examined himself, he has stated that at the time of accident he was a mason by vocation and he used to get big contracts for repair, renovation, interior designing of homes, sometimes offices and he was earning Rs.10,00,000/- per annum. The Income Tax returns are filed on record. Income tax returns for the Assessment year 2015-16, 2019-20 along with balance sheet for the said period are at

Exhibit-31 colly. As per Assessment Year 2015-16 the gross income of the claimant was Rs.4,87,128/-; for the Assessment Year 2016-17 the gross income of the claimant was Rs.6,60,225/-, for the Assessment Year 2017-18 the gross income of the claimant was Rs.6,99,337/-; for the Assessment Year 2018-19 the gross income of the claimant was Rs.5,56,199/-; for the Assessment Year 2019-20 the gross income of the claimant was Rs.6,61,537/-. After deducting the income tax the Tribunal has considered income of the claimant at Rs.4,81,000/- I do not find any infirmity in it.

5. While awarding compensation the Tribunal has awarded Rs.4,81,000/- for loss of income. In my view, it should be 3,81,000/-. The Tribunal has awarded Rs.10,00,000/- for pain and suffering it should be Rs.7,00,000/-. The Tribunal has awarded Rs.10,00,000/- for loss of amenities of life it should be Rs.8,00,000/-. The Tribunal has awarded Rs.50,000/- for Special Diet and Conveyance it should be Rs.30,000/-.

6. Considering the above calculations, total comes to Rs.80,45,947.22. The Tribunal has awarded Rs.86,45,947.22 if amount considered by this Court is deducted from the amount awarded by the Tribunal, the excess amount is Rs.6,00,000/-. The appellant is entitled for this amount.

7. In view of above, I pass following Order:

ORDER

i. The appeal is partly allowed.

ii. Respondent No.1/claimant is entitled for the compensation of Rs.80,45,947.22 @ 9% per annum from the date of filing application till realisation of the amount.

iii. Appellant-Insurance Company is permitted to withdraw Rs.6,00,000/- along with accrued interest thereon out of deposited amount.

iv. Statutory amount along with accrued interest be transferred to the Tribunal. Parties are at liberty to withdraw it as per rule.

v. Pending applications, if any, stand disposed off.

8. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)