

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 753 OF 2019**

Reliance General Insurance Company
Limited **Through its Corporate Office** 4th
Floor, Chintamani Avenue Off Western
Express Highway,
Goregaon - East, Mumbai.

(Ori.Opponent No.2)

...Appellant

Versus

1. Rakesh Mahadev Kamble

Age : 24 years, Occu.: Service at present nil
Through father Mahadev Pandurang Kamble

Age : 50 years, Occu.: Labour Work

R/o. Bhandare, Post Kavilvahal,

Tal. Mangaon, District Raigad

(Ori. Applicant)

2. Vaibhav Prabhakar Khatavkar

Age : 40 years, Occu.: Business

R/o. Shop No. 2 & 3, Mayuresh Building

Kasheli, Tal. Bhivandi, District Thane

(Ori.Opponent No.1)

...Respondents

Mr. Rahul Mehta i/by KMC Legal Venture for the Appellant.

Mr. Nitesh Bhutekar a/w Mr. Aniket Nangare for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st MARCH, 2023.

JUDGMENT :

1. The issues involved in this Appeal are income of deceased is considered on higher side, disability is considered on higher side and amounts awarded under various heads are excessive by the Motor Accident Claims Tribunal, Mangaon, District Raigad (for short 'the Tribunal').

2. It is the contention of learned Counsel for the Appellant that the Respondent No.1-Claimant was serving as a driver. No evidence was produced on record about his profession, but Tribunal has considered his monthly income @ Rs.6,000/-, without any evidence, which is on higher side.

3. Learned Counsel further submits that the Tribunal has considered the disability of the Respondent No.1-Claimant at 68%. While considering the disability, the Tribunal has not considered the evidence of Doctor properly and disability is considered on higher side.

4. Learned Counsel further submits that the Tribunal has awarded compensation on higher side. Rs.3,00,000/- is awarded for

pain and suffering, without any sufficient reason, hence, requested to allow the Appeal.

5. Learned Counsel for the Respondent No.1-Claimant submits that the Claimant was a Driver by profession. He was standing near the bus stop, where the offending vehicle gave him dash. The Claimant produced driving licence on record and he produced the evidence showing that he was getting salary @ Rs.6,000/- per month. The Claimant has suffered 68% disability in the said accident. Due to said disability, the Claimant is unable to do any work and he has lost his job. But the Tribunal has awarded the compensation on lower side.

6. I have heard both learned Counsel. Perused Judgment and Order passed by the the Tribunal.

7. To prove the income, the Claimant has examined himself. He has stated that he was getting Rs.6,000/- per month by way of salary. Driving licence of the Claimant is produced on record. At the time of accident, the Claimant was 24 years old. The Tribunal has observed that at the time of accident, the Claimant was getting salary of Rs.6,000/- per month and on that basis the Tribunal has considered his monthly income @ Rs.6,000/- per month. I do not find any infirmity in it.

8. In my view the Claimant was a skilled driver as he possesses driving licence, the notional monthly income considered by the Tribunal @ Rs.6,000/- is proper.

9. In respect of awarding compensation under other heads and disability, to prove the disability, the Claimant has examined Doctor Naren Nayak (PW-2). He has stated that the Claimant was admitted in his hospital. He had head injuries i.e. subdural heamatoma alongwith temporal contusion. He was also having extradural heamatoma. Due to said injuries, the Claimant was suffering from disorientation. He was having difficulty in communication, co-ordination, stability and convulsion. Due to that, he was not in a position to do the work as a normal person. He was not able to balance himself. He was also suffering from epilepsy. Accordingly this witness issued disability certificate of 68% of permanent disability, which at Exh. 34.

10. In cross-examination, this witness admitted that when the Claimant came for disability certificate, he was not asked for MRI, CT-Scan, X-rays. This witness further admitted that conclusion was drawn by him on the basis of medical papers of the treatment provided by the Sion hospital to the Claimant.

11. While dealing with this issue, the Tribunal has observed that the Claimant had injuries to his head and doctor has opined that due to which, the Claimant has suffered disorientation. There is no reason to discard the testimony of Doctor witness. I do not find any infirmity in it, as the Claimant had suffered injuries to his head and nothing came in cross-examination of doctor witness to disbelieve his evidence. The Claimant has suffered 68% disability, comparing to it, the compensation awarded by the Tribunal is proper. The Tribunal has awarded Rs.3,00,000/- for pain and suffering, in my view, which should have Rs.2,50,000/-. Hence, Rs. 50,000/- is excess amount awarded for pain and suffering. In view of above, I pass following order :

ORDER

- i. Appeal is partly allowed.
- ii. The Appellant is permitted to withdraw Rs.50,000/- (in words Rupees Fifty Thousand only) alongwith accrued interest thereon, out of deposited amount.
- iii. The Respondent No.1-Claimant is permitted to withdraw balance amount along with accrued interest thereon.

- iv. The statutory amount be transmitted to the Tribunal
alongwith accrued interest thereon.
- v. The parties are at liberty to withdraw the amount as per
rule.

(SHIVKUMAR DIGE, J.)

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