IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1021 OF 2019

SBI General Insurance Co. Ltd.)
101, 1st Floor, Krishna Baug, A Wing,)
New Maniklal Est, Above Bank of Baroda,)
S. N. Mehta Marg,)
Ghatkopar (W), Mumbai- 400086) ....Appellant
(Org. Insurer)

Versus

1. Shri. Rakesh Dilip Joshi)
Aged Adult, Occ.: Not known,)
R/at C-26, B-Wing, Room No. 303,)
RMMS Colony, Gokuldham, Goregaon (E),)
Mumbai - 400068.)

2. Ambu Govindan Boidu)
Aged adult, Occ: Not Known,)
R/o. Rom No. 09, Shanmiullah Chawl,)
Vasai Phata, Vasai (E), Thane- 401208) ....Respondents
(Resp. 1 org. Claimant
Resp. 2 org. Opp. Party)

Mr. Devendranath S. Joshi for the Appellant.
Ms. Varsha Chavan for the Respondent No. 1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2023.

JUDGMENT :

1. The issues involved in this appeal are pay and recovery order passed by the Motor Accident Claims Tribunal and quantum of compensation.

2. It is contention of learned counsel for the Appellant that it has been proved before the tribunal that driver of offending vehicle was not holding effective and valid driving license at the time of accident and it was fake license. In spite of that the tribunal has passed pay and recovery order which is improper. The tribunal ought to have exonerated the insurance company from paying liability.

3. Learned counsel further submits that though claimant has stated he has suffered 42% disability but after the accident the claimant had joined the service. Hence, there was no actual loss of earning but tribunal has not considered this facts and has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the Respondent /claimant that it is settled principle of law that in case if driver was not holding effective and valid driving license at the time of accident.

As a contractual liability the insurance company has to pay the compensation and recover from the owner. The order passed by the tribunal is proper.

5. Learned counsel further submits that doctor has given 42% disability to the claimant but the tribunal has considered only 17% disability which is not proper. Moreover it has come in the evidence of doctor that spleen of the claimant is removed from his body. So, the claimant has become permanently disabled and he is not able to work as before accident. The employer of claimant in his evidence has stated that the claimant is unable to do any work as he was doing prior to the accident. Hence, requested to dismiss the appeal.

6. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the tribunal'). In respect of pay and recover order. It is contention of learned counsel for the appellant that at the time of accident the driver of offending vehicle was holding fake license, while dealing with this issue. The tribunal has observed that the witness examined by the appellant admitted that as per the avoidance clause specified in the insurance policy. The insurance can be directed to pay the compensation to the applicant with liberty to recover the same from

the owner of the offending vehicle and relying on the judgment of Hon'ble Apex Court in the case of ***Lal Singh Marabi vs. National Insurance Co. Ltd. and anothers 2017 ACJ 1362 (S.C.) and Pappu and other Vinod Kumar Lamba and Anr. 2018 SCJ 690 (S.C.).*** The tribunal has held that the appellant has to pay the compensation first and recover it from the owner of the vehicle. I do not find any infirmity in it. In respect of awarding the compensation the doctor has issued the disability certificate of 42.5% to the claimant where as the tribunal has considered it as 17%. It is contention of learned counsel for the appellant that tribunal has awarded compensation on higher side. The tribunal has considered the monthly income of the claimant at Rs. 68,168/- per month. The claimant at Exhibit-'21' has stated that he was getting salary of Rs.86,000/- per month including over time, to prove his income he examined S J. Patil, Manager Reliance Infrastructure Co. Ltd. This witness has stated that the claimant was getting salary of Rs. 86,964/- per month. In cross examination this witness admitted that the said salary was including over time and on that basis the tribunal has considered monthly income of the claimant at Rs. 68,168/-. I do not find any infirmity in it.

8. It is contention of learned counsel for the appellant that tribunal has awarded excessive amount under other heads. I do not find any infirmity in it. Moreover, the spleen of the claimant is removed from his body and doctor has stated because of removal of spleen the claimant is unable to do work of over time and his health is affected for further life. The tribunal has considered disability on lower side without any reason because of removal of spleen from body, the claimant's body has become permanently disabled. Hence, Appeal is devoid of merit and I pass following order.

ORDER.

i. Appeal is dismissed. No order as to cost.

ii. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)