

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 156 OF 2022

BHARTI AXA General Insurance Company Limited)
 4th Floor, Millenium Star Building)
 Dole Patil Road, Pune)
 Through Legal Manager Mr. Ashwin Kumar Gawai)

(Original Opponent No. 2)
Appellant

Versus

1. Shri Vaikuntha Ramnath Sahani)
 Aged about 20 years)
 Occupation: Nil)
 R/at: Chembur Camp)
 Navjivan Society, Vijay Nagar, Chembur, Mumbai)

(Original Claimant No. 1)

2. M/s Arham Exim Private Limited)
 Latif House, Ground Floor)
 250, Sant Tukaram Road)
 Iron Market)
 Thane-400 009)
 [Owner of Motor Crane bearing No: NL-05-D-6147])

(Original Opp. Party No. 1)

3. Shri Rakesh Bhola Yadav)
 Vaghoba Nagar)
 Near Prakash Tunnel, Kalwa - District - Thane)
 [Driver of Motor Crane bearing No: NL-05-D-6147])

(Original Opp. Party No.2)

....Respondents

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

Ms. Rina Kundu for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

JUDGMENT:

1. The issue involved in this appeal is the excessive compensation awarded by Motor Accident Claims Tribunal, Thane, (for short '**the Tribunal**').

2. It is contention of learned counsel for the Appellant. The Tribunal has awarded exorbitant and excessive compensation under all heads.

3. Learned counsel further submits that the Tribunal has awarded Rs. 1,00,000/- under the head of injuries caused to the claimant. Whereas, the tribunal has already considered other heads and awarded the compensation.

4. Learned counsel further submits that at the time of accident driver of the offending vehicle was not holding effective and valid driving license, but this fact is not considered by the tribunal and

fixed liability on Appellant which is improper. The Appellant/Insurance Company should have been exonerated from paying the liability. Hence, requested to allow the Appeal.

5. It is contention of learned counsel for the respondent/claimant that at the time of accident deceased was 20 years old, due to accident injuries eight surgeries are performed on the claimant, after accident he is unable to do any work. There is 32% permanent partial disability suffered by the claimant in the said accident. Considering all the aspects, the tribunal has awarded compensation which are proper no interference is required in it.

6. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'). Admittedly the claimant has suffered 32% disability in the accident, to prove the disability the claimant examined Dr. Ajit Sawant (C.W.4). He has stated that the claimant has suffered 90% permanent partial disability, disability is certificate at Exhibit-'48'. The claimant examined Dr. Shrikrishna Dhone (C.W.3) he has stated that on 20th August, 2011. He examined the claimant and assessed his

permanent partial disability to the tune of 32%, considering the medical evidence on record. The Tribunal has awarded compensation as below (1) Medical treatment and medicine Rs. 1,00,000/-, (2) Amount spent for special diet Rs. 10,000/-, (3) Amount spent of attendance Rs.10,000/-, (4) Amount spent for conveyance Rs. 10,000/-, (5) Pain and suffering Rs. 25,000/-, (6) Future loss of income Rs. 3,24,000/-, (7) Loss of amenities and loss of expectation of life Rs. 1,00,000/-, (8) Loss of marriage prospects Rs. 1,00,000/-, (9) Injuries caused to the applicant Rs. 1,00,000/-. It is contention of learned counsel for the Applicant, compensation awarded under head of injures caused to the applicant Rs. 1,00,000/- and medical expenses are on higher side.

7. In my view, The claimant is carpenter, the Government Hospital has issued the 90% permanent partial disability the eight surgeries are performed on the claimant. The tribunal has awarded amount for pain and suffering at Rs. 25,000/- so out of amount awarded for injuries caused to the claimant, I am considering Rs. 1,00,000/- for pain and suffering considering above Rs. 25,000/- is excess compensation awarded by the Tribunal.

8. In respect of issue of driving license, the tribunal has observed that at the time of accident driver was not holding effective and valid driving license, and pay and recovery order is passed by the tribunal. I do not find any infirmity in it.

9. In view of above, I pass following order.

ORDER

- i. Appeal is partly allowed.
 - ii. The appellants are permitted to withdraw Rs. 25,000/- along with accrued interest thereon, if whole amount is not withdrawn by the claimants.
 - iii. The claimants are permitted to withdraw balance amount along with accrued interest thereon.
 - iv. The statutory amount be transmitted to the Motor Accident Claims Tribunal, Thane. The parties are at liberty to withdraw it, as per Rule.
10. All pending civil applications, if any, are disposed of.

(S. G. DIGE, J.)