IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.563 OF 2020

Ashok Kumar U. Singh)
Aged – 49 years,)
Residing at Century Mills Quarters,)
Bldg. No.4/16/, P.B. Marg, Worli,)
Mumbai – 400 017.) ….Appellant

Versus

1. B.E.S.T.Undertaking through)
General Manager, BEST Undertaking,)
Electric House, Colaba,)
Mumbai – 400 005.)
2. Iqbal Singh Bhatti,)
A-101, Nilgiri Garden CHS,)
Sector 24, CBD Belapur,)
Navi Mumbai.)
3. Bajaj Allianz General Insurance Co.Ltd.)
Rustomjee Aspire Building,)
3rd floor (1st Floor), Everard Nagar-2,)
(Near Honda Showroom and)
Priyadarshini Park),)
Eastern Express Highway,)
Chunnabhatti, Sion (East),)
Mumbai – 22.)
(Policy No.BZ0800715620)
Valid from 17/10/2008 to 16/10/2009)) ….Respondents

Mr. Pramod Purav along with Mr. Niketan Nakhawa, Advocate for the Appellant.
Mr. Pandit Kasar, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th DECEMBER, 2023.

Judgment:

1. By this appeal, appellant is seeking enhancement of compensation.

2. It is the contention of learned counsel for the appellant/claimant that appellant had suffered 30% permanent disability, in spite of that, the Tribunal has considered 15% disability only and on that basis, compensation is awarded. Learned counsel further submitted that the appellant was admitted in hospital for 10 days but no compensation for special diet is given. It is further contention of learned counsel for appellant that appellant was travelling in B.E.S.T. bus and the offending truck gave dash to the back side of the bus due to which the appellant suffered injury but Tribunal has considered 10% contributory negligence of the appellant/claimant, which is not correct. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent No.1 that no Doctor was examined to prove the disability of the appellant. Though Doctor has given 30% disability certificate, the Doctor who has issued the

injury certificate has not been examined. Learned counsel further submitted that medical bills were produced before the Court to show that appellant was admitted in hospital. The Tribunal has considered all the aspects and on that basis, compensation is awarded and no interference is required in it. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal").

5. It is the contention of learned counsel for the appellant that due to the accident, appellant has suffered 30% disability but no Doctor was examined to prove the disability. The Tribunal has considered 15% disability. It appears from record that appellant was admitted in hospital for 10 days but no compensation for special diet is given. Hence I am considering Rs.10,000/- towards compensation for special diet.

It is further contention of learned counsel for the appellant that appellant was travelling in B.E.S.T. bus and the offending truck gave dash to the bus from backside due to which the appellant suffered injury but Tribunal has considered 10% contributory negligence of the deceased. I am unable to understand the observation of the Tribunal in fixing the contributory negligence on appellant/claimant as he was travelling in the bus so no question of contributory negligence arises. I am setting-aside the said observation. The Tribunal has deducted an amount of Rs.2800/- towards 10% contributory negligence. The appellant/claimant is entitled for this amount. Thus the respondent/claimant is entitled to an enhanced amount of Rs.13,000/- rounded up (Rs.10,000/- towards special diet and Rs.2800/- deducted towards contributory negligence). The Tribunal has considered all other aspects, hence, no interference is required in those aspects.

6. In view of above, I pass following order :

1. The appeal is partly allowed.
2. The claimant is entitled for enhanced compensation of Rs.13000/- @ 7.5% interest per annum from the date of filing of the claim petition till the realisation of the amount.
3. Respondent No.3-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within four weeks from receipt of this order.
4. The appellant/claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)