

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 493 OF 2021

Regional Manater)
Reliance General Insurance Co. Ltd)
Chintamani Avenue, 4th Flor Next to)
Near Virwani Industrial Estate)
Near Wester Express Highway)
Goregaon (East), Mumbai-400063)....Appellant

Versus

1. Shri Santosh Babanrao Jadhav)
Age - 38 years, Occu - service)
R/at S. No. 36/11, Keshav Nagar)
Ambegaon Pathar, Dhankwadi)
Pune.)....Orig. Applicant.
2. Mr. Nirmal Singh S/o Kehar Singh)
Age - Adult, Occu - Truck Owner)
R/at - H. No. 1/3, Mahindra Park)
Jehangir Puri, Gurgaon Delhi)....Opp. Party

....(Resp. No. 1 is
Org. Applicant &
Res. No. 2 is Orig.
Opp. Party)

Ms. D. Shalini Shankar for the Appellant.
Mr. Yhogesh Pande for the Respondent No. 1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2023.

JUDGMENT. :

1. The issues involved in this appeal are at the time of accident the driver of offending truck was not holding effective and valid driving license and compensation is awarded on higher side.

2. It is contention of learned counsel for the appellant that at the time of accident the driver of offending truck was not holding effective and valid driving license.

3. Learned counsel further submits that claimant was member of ESI scheme. Hence, he is not entitled for any compensation in Motor Vehicle Act, 1988. The disability certificate of the claimant was for limb and not for whole body. After the accident, the claimant has not lost his job and has continued in the service, in spite of that the tribunal has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the claimant that

claimant has suffered 30% permanent disability, the doctor was examined to prove the disability of the claimant six surgeries are performed on the claimant K Wire Fixation was fixed. He was admitted in hospital for couple of months. The tribunal has considered all the facts on that basis compensation is awarded which is proper. Hence, requested to dismiss the appeal.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal Pune (for short 'the tribunal'). It is contention of learned counsel for the appellant that at the time of accident driver of offending truck was not holding effective and valid driving license. To prove his defense no witness was examined by the appellant. Hence, I do not see merit in this contention. To prove the disability of claimant. Claimant has examined Dr. Yogesh Somwansi & Dr. Madan Hardikar. Dr. Somwanshi has stated that on 15th August 2012, K Wire Fixation was done on the claimant and he was admitted in his hospital of couple of days. To prove the disability the claimants examined Dr. Madan Hardikar he has stated that he examined the claimant on 10th June, 2013. According to him claimant has suffered permanent disability

to the extent of 30%. The tribunal has observed that nothing elicited in cross-examination of this witness and the tribunal has considered 30% disability of the claimant. I do not find any infirmity in it. It appears from record that different surgeries were performed on the claimant. He was admitted in the hospital for couple of months. The compensation awarded by the tribunal is proper. In respect of issue of ESI scheme . The said issue was not raised before the tribunal by the appellant. Neither any evidence led before the tribunal in that regard hence, I do not see merit in contention of learned counsel for the appellant that the claimant was member of ESI scheme. At the time of accident claimant was serving in Pune District Security Guard Board on the post of Traffic Warden as a permanent employee. His monthly salary of Rs. 6,500 per month. The tribunal has considered monthly salary at Rs. 6,000/- and on that basis compensation is awarded. I do not find any infirmity in it.

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

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are permitted to withdraw 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.)