

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

FIRST APPEAL NO. 524 OF 2019
WITH
CIVIL APPLICATION NO. 1655 OF 2019
IN
FIRST APPEAL NO. 524 OF 2019

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Reliance General Insurance Co. Ltd.)
 Through it's Corporate Office)
 4th Floor, Chintamani Avenue)
 Off Western Express Highway)
 Goregaon – East)
 Churchgate, Mumbai – 400 063)....Appellant
 (Orig. Petitioner)

Versus

1. Mr. Arafat Sultan Shaikh)
 Aged: 24 years)
 Residing at : Razak Chawl)
 Beharam Nagar, R. No. 346)
 Bandra (E), Mumbai – 400 051)Original
 Petitioner

2. Ashitosh tours Travels)
 Prop. Mr. Bapu Gange)
 Vasantlal Naik Nagar, S. G. Barve Marg)
 Near Bombay Auto Consultant)
 Mumbai – 400 071)Original
 Respondent No.1.
Respondents.

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
 Mr. T. R. Kale i/b Mr. T. J. Mendon for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this appeal is compensation awarded under the head of conveyance charges.
2. It is contention of learned counsel for the Appellant / Insurance Company that the Tribunal has considered Rs.84,000/- per year as income of deceased i.e. Rs.7,000/- per month without any evidence on record, which is on higher side. Moreover, the Claimant had suffered 65% disability but, the Tribunal has considered 100% occupational disability, which is not proper. Learned counsel further submitted that the Tribunal has awarded Rs.40,000/- as conveyance charges, it is on higher side. Hence, requested to allow the Appeal.
3. It is contention of learned counsel for the Respondent / Claimant that the Claimant was working as labourer and he was earning Rs.9,000/- per month but, the Tribunal has considered monthly income of the Claimant at Rs.7,000/- per month, which is proper. Learned counsel further submitted that due to accidental injuries the Claimant has suffered 65% permanent disability but, he

had 100% occupational disability. The judgment and award passed by the Tribunal is proper and no interference is required in it.

4. I have heard both learned counsel. Perused Judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

5. While dealing with the issue of income of the Claimant, the Tribunal has observed that in the Claim Petition as well as in the affidavit of evidence. The Claimant has stated that he was earning Rs.9,000/- per month but, he has not examined the labour contractor under whom he was working. Considering the fact that accident occurred in the year 2012. The average monthly income of the labourer can be assumed at Rs.7,000/- per month. On that basis the tribunal has considered monthly income of the Claimant at Rs.7,000/-. I do not find any infirmity in it. As per the evidence of witness Dr. K. Shah at Exhibit – 38, the Claimant has suffered 65% permanent physical disability due to in accident. He is unable to do any work and his occupational disability is 100%. Hence, I do not see merit in the contention that 100% disability considered by the Tribunal is not proper. The Tribunal has awarded Rs.40,000/- for conveyance charges, it should be Rs.10,000/- and Rs.30,000/- are excess. I am considering Rs.10,000/- as conveyance charges.

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

ORDER

- I. Appeal is partly allowed.
 - ii. The Appellant is permitted to withdraw Rs.30,000/- with proportionate interest out of deposited amount.
 - iii. The Claimant is permitted to withdraw balance deposited amount along with proportionate interest.
 - iv. The statutory amount be transmitted to the tribunal along with accrued interest. The parties are at liberty to withdraw it, as per Rule.
7. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)