IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.692 OF 2015
WITH
CIVIL APPLICATION NO. 3038 OF 2015
WITH
FIRST APPEAL STAMP NO. 13224 OF 2012
WITH
CIVIL APPLICATION NO. 6489 OF 2012

Bajaj Allianz General Insurance Co., Ltd., APPELLANT
Through its Divisional Manager /
Authorized Signatory,
2nd Floor, Rajendra Bhavan
Adalat Road,
Aurangabad 431 001

VERSUS

1. Shaikh Zafar Shaikh Ismail RESPONDENTS
Age – 34 years, Occ – Labourer
R/o At Nijamgus Colony, Bhavani Nagar
District – Aurangabad

2. Mohan Songiri Giri
Age – Major, Occ – Driver
R/o AT Santoshi Mata Nagar
Mukundwadi
District – Aurangabad

3. Sher Khan Rasheed Khan
Age - Major, Occ – Owner,
R/o House No. 4-20-5/P
Behind Central Bus Stand,
Garam Pani,
Aurangabad

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Mr. Mohit R. Deshmukh, Advocate for the appellant
Mr. Subhash Chillarge, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th JUNE, 2024

ORDER :

1. First Appeal Stamp No. 13224 of 2012 is filed by appellant Insurance Company challenging grant of no fault liability amount, to the claimant.

2. Subsequently, the claim petition filed by the claimant is partly allowed and total compensation of Rs.1,20,000/-, together with interest @ 9% p.a. is awarded to the claimant, by Motor Accident Claims Tribunal, Aurangabad (hereinafter for short “Tribunal”). The said Judgment and Award is questioned by the Insurance Company, by filing First Appeal No. 692 of 2015.

3. In view fo final Award passed by the Tribunal, the no fault liability order has merged into the final award and, therefore, challenge to the same in First Appeal Stamp No. 13224 of 2012 is rendered infructuous. Therefore, First Appeal Stamp No. 13224 of 2012 is disposed of as infructuous.

4. In First Appeal No. 692 of 2015, the Insurance Company has challenged the Judgment and Award passed by the Tribunal in MACP No. 508 of 2009.

5. Respondent No.1 – claimant is a cart puller. On 13th March, 2009, at 21.00 hours, claimant and Sayed Madar Syed Mohammad were pulling handcart carrying goods on Aurangabad

to Jalna Road. When they reached in front of MSEB office at Mukundwadi, one brand new Ape Rickshaw without registration number, came from behind and gave dash to them, due to which claimant suffered grievous injuries. After the accident, Rickshaw Driver fled from the spot, leaving the Rickshaw there. An offence was registered against the Rickshaw Driver. Claimant was admitted in Ghati Hospital for 8 to 10 days and his right leg was operated. However, he was not fully cured and hence, he was required to take treatment in private hospital. It is contended that he will require to undergo treatment in future also. It is contended that at the time of accident, he was 29 year old and was getting wages of Rs.5000/- per month. Due to the injuries suffered in the accident, he suffered permanent disability and is unable to stand properly and unable to do his previous work without help of others. Due to the accident, his source of income is stopped and his family is facing financial difficulties. He, therefore, claimed compensation of Rs.2 lakh.

6. Insurance Company, by filing written statement, opposed the claim, denying that the rickshaw shown to have been involved in the accident, was not actually involved in the accident. The Rickshaw Driver was not holding valid and effective driving licence and, therefore, Insurance Company is not liable to pay the compensation. It is contended that the accident has

occurred due to negligence of claimant and not due to negligence on the part of the Rickshaw Driver.

7. The Tribunal, after recording evidence and hearing the parties, partly allowed the claim and directed the owner, Rickshaw Driver and Insurance Company to jointly and severally pay Rs.1,20,000/- towards compensation together with interest @ 9% p.a., including the no fault liability amount.

8. Heard learned advocate for appellant – Insurance Company and learned advocate for respondent No. 1- Claimant. Perused the record.

9. Learned advocate for Insurance Company assailed the impugned Judgment and Award contending that the Tribunal has failed to consider that the claimant has failed to prove involvement of the rickshaw in the accident. The documents, i.e. FIR and spot Panchanama filed on record by claimant, do not refer the particulars of the vehicle involved in the accident, therefore, involvement of the rickshaw in the accident is doubtful, this aspect is ignored by the Tribunal. It is contended that no witnesses are examined by the claimant, in support of his claim. Doctor was not examined to prove the disability of the claimant and Tribunal has awarded exorbitant compensation.

10. Learned advocate for claimant has supported the impugned Judgment and Award.

11. Though served, none appears for respondents No.2 and 3.

12. Perusal of record indicates that FIR and Spot Panchanama do not contain number of rickshaw. However, fact remains that it is the specific case of claimant that the rickshaw gave dash to them from behind and the driver fled from the spot, leaving the rickshaw there. Clamant has placed on record certified copy of FIR at Exhibit-44 lodged by Kantabai Mukund Pawar, who was travelling in the auto rickshaw, involved in the accident, contending that on 13th March, 2009, at 21.00 hours, rickshaw, in which she was travelling, gave dash to two persons carrying handcart proceeding ahead and thereafter the rickshaw turned turtle. After the accident, rickshaw driver fled away from the spot, leaving rickshaw there. Charge sheet filed against rickshaw driver is also placed on record, so also sale certificate of rickshaw, which shows that Ape rickshaw, having Engine No. AEMBRM 64119 and Chassis No. MD2AA24ZRWM40412, is involved in the accident. Statement of Syed Madar Syed Mohammad, who was pulling handcart along with claimant confirms the version of claimant. MLC forms of two occupants of rickshaw, its driver, claimant and Syed Madar Syed Mohammad,

who were admitted in Ghati Hospital after the accident, are also brought on record. Thus, there is sufficient material on record to show that said rickshaw was involved in the accident.

13. Claimant has placed on record injury certificate along with disablement certificate, which shows that he has suffered 17% permanent disability to his hip and right knee. His right leg is shortened by one inch. It is, therefore, clear that claimant is not in a position to do his earlier labour work, due to said permanent disability and shortening of his right leg.

14. Tribunal has held that the claimant was of 31 years of age at the time of accident and he was doing labour work. Therefore, notional income is taken at Rs.5000/- per month. Considering all these aspects, the Tribunal has thought it fit to award lump sump compensation of Rs.70,000/-, Rs.10,000/- for loss of income, Rs.30,000/- towards medical expenses and Rs.10,000/- for pain and suffering. Thus, total compensation of Rs.1,20,000/- is awarded by the Tribunal, which by no stretch of imagination can be said to be exorbitant.

15. The Tribunal has passed well reasoned judgment and Award, which is not liable to be interfered with. The First Appeal No. 692 of 2015 being devoid of merit is dismissed. First Appeal Stamp No. 13224 of 2012 is disposed of infructuous. In view of

disposal of first appeals, pending civil applications are also disposed of.

16. It is informed by learned advocate for Insurance Company that at the time of filing of both the appeals, only the statutory amount of Rs.25,000/- each in both these appeals is deposited.

17. Insurance Company shall deposit the balance amount together with interest as directed by the Tribunal, within a period of six weeks from the date of uploading of this order, in this Court. On deposit of the said amount, claimant shall be paid the same and the amount deposited by Insurance Company together with accrued interest.

[NITIN B. SURYAWANSHI]
JUDGE

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