IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2099 OF 2019

UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD. THR ITS MANAGER
VERSUS
BHAUSAHEB HILAL PAWAR AND ORS

Mr. A. S. Usmanpurkar, Advocate for the appellant
Mr. B. L. Patil, Advocate h/f Mr. A. D. Pawar, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.
DATE : 11th JANUARY, 2024

P.C. :-

1. This appeal is filed under Section 173 of Motor Vehicle Act challenging the award passed in MACP No. 310/2023 dated 19/11/2018 by learned Tribunal granting compensation to claimant - Bhausaheb for sustaining grievous injuries.

2. The facts which led to the filing of present appeal can be narrated as under:

(i) On 18/12/2012 the claimant (injured) was traveling in Jeep bearing registration No. MH-18 E 8653 from Humbarde to Dhule. When the vehicle came near bridge at village Nardana, a container bearing registration No. HR-55/N-8276 came from opposite direction in high and excessive speed. The driver lost control of the vehicle and dashed against the jeep. As a result of the accident claimant sustained injuries of right thigh bone facture as well as head injuries. According to him he was taken to Civil Hospital, Dhule and thereafter to Sanjivani Hospital wherein he was in door patient for three months. Claimant is aged 52 years and an agriculturist with annual income of Rs.5-7 lakhs. He claims that he sustained 100% disability. Total claim of Rs. 7 lakhs made on under various heads.

(ii) Owner of the offending vehicle and driver failed to the written statement and contest the claim. Insurer filed written statement Exhibit 19. There is no dispute about the fact that the vehicle in question was duly insured under a valid insurance policy during relevant time. Insurer denied the claim made by the claimants. Maintainability of the claim is challenged. It is also case of the insurer that the container was plying without permit and hence it is a breach of condition of policy.

(iii) Issues were framed at Exhibit 20. Claimant examined himself at Exhibit 34 and relied upon the complaint Exhibit 35, spot panchnama Exhibit 36 and his statement recorded by police at Exhibit 37. In order to prove injuries and medical treatment he examined Dr. Zende Exhibit 54, Dr. Warade (Exhibit 63) and Dr. Shinde Exhibit 60. No evidence led by the insurer except relying upon the insurance policy.

3. After considering the evidence on record learned Tribunal allowed the claim petition by directing payment of compensation of Rs.8,35,600/- and holding opponent Nos. 1 to 3 jointly and severally responsible for the payment of the same with interest at the rate of 7.5% per annum.

4. This appeal is filed by the insurer with the contention that the Tribunal committed error in computing the amount of compensation. It is further claimed that the offending container was being plying without permit and fitness and hence there is breach of terms and conditions of insurance policy which makes insurer not liable to pay compensation to the claimants. It is also sought to be claimed that the offending vehicle was driven in moderate speed and the accident has occurred to the negligence of the driver of the jeep.

5. It is also claimed that the future medical expenses granted by the Tribunal is without any evidence and excessive. The learned counsel for the insurer during course of arguments on the line of the grounds raised in the appeal memo took exception to the impugned judgment and award. Learned counsel for the respondents supported the said award.

6. This is injury claim arising out of accident occurred on 18/12/2012. Injured was traveling in a jeep bearing registration No. MH 18-E 8653.

When the said vehicle reached near railway bridge at Nardana a container bearing registration No. HR -55 N 8276 in opposite direction in high and excessive speed and dash to the jeep in which injured was traveling. He sustained injury in the said accident. He was taken to Sanjeevan Hospital wherein he was treated indoor patient and surgery was also performed on him at Sopan Hospital at Nashik as his bone fracture was sustained by him. Claimant was occupying the jeep and hence he has witness to the occurrence of the accident. He specifically deposed about Jeep in which he was traveling being driven in moderate speed whereas the offending container was driver in high and excessive speed which has resulted in to causing of the accident. Initial burden therefore is duly discharged by the claimants/injured to prove the occurrence of the accident as well as the negligence on the part of the driver of the offending vehicle. There is no evidence led by the other side in rebuttal.

7. Injured further deposed about he being taken to Civil Hospital, Dhule and thereafter being admitted in Hospital of Dr. Zende from 11/12/2012 to 16/12/2012. He was then shifted to Sopan Hospital from 16/12/2012 to 10/01/2013. There was surgery performed on his right thigh as the thigh bone was fractured. To support his contention he examined Dr. Zende at Exhibit 54 who deposed about the hospitalization

and treatment given to the injured. He also examined the injured and certified the injuries caused to him vide injury certificate Exhibit 55. It is accepted in the cross-examination by this witness he takes 5 to 6 months for uniting the fractured caused to the right hip. Another witness i.e. Dr. Warade (Exhibit 63) stated about the admission of the injured in his hospital on 16/12/2012 and he undergoing conservative treatment and thereafter being operated for right femur fracture and open reduction surgery was conducted for internal fixation of the plate. According to this witness the injured cannot be fully cured due to brainstem injury and will have to take medical treatment throughout his life.

8. Insured claimed that he has lost 100% earning capacity due to which he is unable to perform agricultural work owing to the physical disability caused by the injuries in the accident. Dr. Shinde (Exhibit 60) examined injured and assessed his permanent disability to the extent of 55% (Exhibit 61). In the cross examination of this witness it is brought on record that the fracture is properly united and that he has not obtained any opinion of Neurosurgeon with regard to the head injury sustained by the injured. Considering the evidence of Dr. Warade and Dr. Shinde has rightly observed by the learned Tribunal that there would be restriction on the moment of the injured to some extent which would

become an impediment in performing the physical/agricultural work. After considering the opinion of experts that disability ascertain to the extent of 55% is not functional disability of the injured and same is rightly held to be on higher side. With regard to the nature of injury caused to the injured and the opinion of the Medical Officers the Tribunal has rightly held the disability of the injured to the extent of 30%.

9. Before the Tribunal evidence was led by the injured claiming that he is an agriculturist and he is not able to perform his work owing to the permanent disability caused to him. Since his disability is restricted to the extent of 30%, appropriate compensation is required to be given to the injured. Needless to say that the owner of the agricultural land would not be able to do the agricultural work on his own with permanent disability and for that purpose he would require to employment of additional hand. Apart from this even work of superintendence over the activities in the field would be restricted. In the instant case though there was no direct evidence placed on record by the injured showing his income, however, he was able to prove that he holds about 8 acres of agricultural land and having regard to the said fact his income was considered at the rate of Rs.6000/- per month which is reasonable and not excessive. Considering the disability to the extent of 30% the appropriate deduction is given by the Tribunal towards loss of income.

The multiplier applied by the Tribunal is commensurate with the age of the injured. Similarly on the point of future medical expenses as opined by Doctor it is just and necessary to grant additional compensation to meet such future medical expenses. Having regard to the aforestated facts the amount of compensation determined by Tribunal is just fair and proper requiring no interference therein.

10. Though it is sought to be argued on behalf of the insurer that the container was plying without permit and fitness, however, there is no evidence led by the insurer in order to prove the said fact. In absence of any evidence in that regard it cannot be held that there was breach of the condition of insurance policy. Thus, the liability of insurer to pay compensation to the claimants does not get absolved. In the result, appeal stands dismissed.

(R. M. JOSHI, J.)

ssp