



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2407 OF 2020

Cholamandalam General Insurance Company Limited .. Appellants
Through its Authorized Signatory/Branch Manager
Shop No.6 & 7, Main Road,
New Hotel City Pride, Tilakwadi,
Nashik – 422 002.

Through its Authorized Signatory / Branch Manager,
3rd Floor, Oberoy Tower, Civil Lines,
Jalna Road, Opp. Amarpreet Hotel, Aurangabad,
Dist. Aurangabad.

Versus

1. Ashish Dnyandev Dhere .. Respondents
Age. 21 years, Occ. Education,
R/o. Ekrukhe, Tal. Rahata,
Dist. Ahmednagar.
2. Reshma Abhijit Vaishnav
Age. 38 years, Occ.
R/o. Abhindra Villa, B-16, Amrit Nagar,
Lasalgaon, Tq. Niphad,
Dist. Nashik – 422 306.
3. Abhijit Ramdas Vaishnav
Age. 39 years, Occ.
R/o. Lasalgaon, Tq. Niphad,
Dist. Nashik – 422 306.
4. Jitendra Shivaji Jagtap
Age. Major, Occ.
R/o. Bhaur, Tal. Vaijapur,
Dist. Aurangabad.

5. Navnath Yeshwant Kshirsagar
Age. 42 years, Occ.
R/o. Ekrukhe, Tal. Rahata,
Dist. Ahmednagar.
6. Akshay Ramdas Warker
Age. 24 years, Occ.
R/o. Kopadi, Tal. Kopargaon,
Dist. Ahmednagar.

Mr. Abhijit Choudhari, Advocate for the appellant.

Mr. Umesh Mitkari h/f. Mr. Mukul Kulkarni, Advocate for respondent No.1.

Mr. A.R. Lukhe h/f. Mr. A.S. Shelke, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.
DATED : 19.06.2024

ORAL JUDGMENT :-

01. Heard learned Advocates for the parties. This Court has gone through the record with the assistance of the learned Advocates for the parties.

02. This appeal is filed by the insurance company challenging the judgment and award passed by the learned Member, M.A.C.T., Kopargaon dated 09.08.2018 in M.A.C.P. No.45 of 2016. By way of the impugned judgment, the learned Member allowed the petition of respondent No.1- Ashish directing present appellants and respondent Nos.2 and 3 to pay to respondent No.1 jointly and severally an amount of Rs.16,92,786/- with

interest @ 8% p.a. from the date of application till realization. Respondent No.1 had filed injury claim as he suffered an accident. The vehicle driven by respondent No.3, belonging to respondent No.2 gave dash to respondent No.1, who was a pillion rider of the motor-cycle owned by respondent No.5. Respondent No.4 happens to be earlier owner of the said motor-cycle. When the injured was proceeding from Nagar to Manmad, the offending vehicle gave dash to the motor-cycle. The injured hit the bonnet of the car and fell down on the road. The car ran over his right leg. The injured received crush injury to his right leg. Because of the accident, his right leg was required to be amputated from the ankle. The injured happened to be student of first year B.Sc., who was residing with his maternal uncle. He was helping his uncle in the agricultural work and also used to supply milk to dairy. It is further case of the injured that he suffered 60% permanent disability because of the accident.

03. The learned Tribunal allowed the claim petition considering tentative monthly income of Rs.6000/- per month. The annual income was thus taken to be Rs.72,000/-. The learned Tribunal added 40% towards future prospectus. Since the injured was 19 years of age, multiplier of 18 was

applied. The learned Tribunal also awarded Rs.5 lakhs towards pain and suffering and loss of amenities of life. The learned Tribunal awarded Rs.1,88,640/- towards loss of earning, Rs.1,04,146/- towards medicine bills, Rs.5,00,000/- towards pain and sufferings. Total amount of Rs.16,92,786/- is thus awarded.

04. It is the case of the present appellant that the disability does not necessarily show loss of income to that extent. Another ground taken is of contributory negligence.

05. The learned Advocate for the insurance company vehemently argued the appeal. He submits that the learned Tribunal has considered the disability to the extent of 60%. The same ought to have been taken 50% considering Entry No.21, Schedule I, Part II of the Employees Compensation Act. He submits that there are no such entries given in the Motor Vehicles Act and therefore the Court ought to have considered the entries in the Employees Compensation Act and ought to have considered the disability to the extent of 50%. He further submits that the learned Tribunal has granted Rs. 5 lakhs towards pain and sufferings, which is quite exorbitant. There is no proper

pleading in respect of pain and sufferings and still the learned Tribunal has awarded such amount. He, thus, submits that on both these counts, the judgment deserves to be modified.

06. The learned Advocate for the respondent/claimant submits that to prove disability to the extent of 60% a Doctor is examined at Exh.44, who has proved certificate at Exh.45. There is no contra evidence. The injured was taking education in B.Sc. Course. He had a bright future. Because of this accident and amputation of leg, he lost bright future prospectus and amenities in the life. The learned Tribunal has rightly awarded Rs.5 lakhs towards pain and sufferings towards amenities. In support of his submissions, he relied upon judgment in the case of **Ankur Kapoor Vs. Oriental Insurance Co. Lrtd., reported in AIR 2017 SC (supp) 302.**

07. On these submissions this Court has to consider as to whether the Trial Court has rightly considered the disability to the extent of 60%. Second question is as to whether the amount of Rs. 5 lakhs can be said to be exorbitant, as awarded by the learned Tribunal for pain and sufferings and loss of amenities. Though the learned Advocate for the appellant submits that

the learned Tribunal ought to have considered Entry No.21, Schedule I, Part II of the Employees Compensation Act, this Court finds that it is not applicable to cases under the Motor Vehicles Act. Certificate at Exh.45 is proved by the Doctor, who has issued the same, showing percentage of disability to the extent of 60%. There is no evidence by the insurance company to prove it otherwise. There is no sufficient cross. No independent witness is examined by the insurance company to show that the extent of the disability is only 50%.

08. So far as pain and sufferings is concerned, there is no doubt about the same. Only submission is that amount of Rs.5 lakhs is exorbitant. Considering the judgment in the case of Ankur Kapoor (supra), it is seen in that case that the accident had taken place on 21.03.2000. The injured in that case had suffered permanent disability to the extent of 50%. He was indoor patient from 21.03.2000 to 31.05.2000 and undergone several surgeries. In that case the Hon'ble Supreme Court had awarded Rs.3 lakhs towards pain, agony and trauma, Rs.3 lakhs towards loss of amenities (including loss of prospectus marriage) and Rs. 3 lakhs towards expectation of life. In the present case the accident took place on 01.03.2016. Considering the price

index in 2016, this Court finds that the amount of Rs.5 lakhs cannot be said to be exorbitant. In the present case, the learned Tribunal has awarded compensation only for pain and suffering and for loss of amenities. Loss of life expectation is not considered. Thus, from this aspect also this Court finds that an amount of Rs.5 lakhs cannot be said to be exorbitant.

09. In view of above discussion, this Court finds that no case is made out to call for interference with the impugned judgment. There is no merit in the appeal and same deserves to be dismissed. The appeal, therefore, stands dismissed with no order as to costs.

10. It is informed that the insurance company had deposited 100% amount in this Court. Out of said amount, 50% is already withdrawn by the claimant-respondent No.1. Remaining 50% amount is still lying in this Court, which was invested in the fixed deposit. In view of this, the remaining amount that was invested in the fixed deposit be paid to respondent No.1 with accrued interest, within six weeks from today.

[KISHORE C. SANT, J.]