ected order as per Speaking to the Minutes of Order dated 27.11.2024 & 05.12.2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4495 OF 2023

Cholamandalam M. S. General Insurance Co. ...Appellant
(Orig. Respondents)

Versus

1. Jakir Shabbir Pathan
2. K. Sudhakar Reddy ...Respondents.
(Orig. Respondents).

WITH
FIRST APPEAL (ST). NO.34079 OF 2018
WITH
CIVIL APPLICATION NO.3642 OF 2019

Jakir s/o Shabbir Pathan ...Appellant

Versus

Cholomandalam M. S. General Insurance Co.
And Ors. ...Respondents

Mr. Abhijit G. Choudhari for Appellant.
Mr. Pramod C. Mayure for Respondent No.1.

CORAM : KISHORE C. SANT, J.
DATE : 12th SEPTEMBER 2024

PC :-

1. Heard the learned Counsel for the parties.

2. Though the parties were referred to the National Lok Adalat by an order dated 7th December 2023, and also further by an order dated 13th February 2024, however, no settlement could be arrived

at between the parties. The matter is, therefore, taken up for final decision with consent of the parties and as the record and proceedings is received.

3. First Appeal No.4495 of 2023 arises out of the Judgment and Award passed by the learned Member, Motor Accident Claims Tribunal (M.A.C.T.), Kopargaon, Dist. Ahmednagar in M.A.C.P. No. 67 of 2013 dated 26th October 2016. By way of impugned Judgment and Award, the learned Member has directed the Insurance Company and the owner of the vehicle, to pay to the Respondent/Claimant an amount of Rs.28,37,500/- alongwith interest at the rate of Rs.7% p.a. from the date of Application.

First Appeal No.34079 of 2018 is filed by original claimant for enhancement of compensation.

4. The Appellant - Insurance Company is the original Respondent No.2 in the claim petition. Respondent No.1 is the Original Claimant. Respondent No.2 is the owner of the vehicle.

5. Facts in short are that, the Respondent No.1 i.e. Claimant has filed a claim petition for injuries. He received an injury which

resulting in permanent disability due to an accident took place on 8th June 2012, while the claimant was proceeding from Savalivihir to Zagade fata road, Tq. Rahata, on his motorcycle alongwith his friend. One luxury bus bearing No.AP-16-TU-6288 was coming from the opposite direction in rash and negligent manner and gave dash to the motorcycle. The bus driver of the said bus lost the control of the vehicle and, therefore, the accident is took place. The appellant was immediately shifted to the hospital at Shirdi and from there, he was again shifted from hospital at Nashik. He was required to be admitted from 9th June, 2012 to 27th September, 2012, and thereafter, from 29th October, 2012 to 7th November, 2012. Thereafter, again he was required to be admitted in the hospital from 15th April, 2013 to 1st May, 2013. The appellant still requires treatment because of the injuries received by him. The injuries are compound fracture of femur right leg alongwith fracture of right tibia and fibula, due to accident he lost bone segment. It is the case of the appellant that, he was working as a driver. Because of the accident now he cannot drive a vehicle and thus, this resulted into his loss of job because of the said disability of permanent nature. The respondent/owner did not appear inspite of service. The claim petition therefore, proceeded ex-parte against him.

6. The Appellant - Insurance Company resisted the claim. The insurance company denied involvement of the bus. It is denied that the accident took place because of negligence of the bus driver. It is alleged that it was the applicant rider of the vehicle, who was negligent in driving the motorcycle. The rider was also not possessing valid and effective license. There was a breach of conditions of the policy and thus, the company is not liable to make any payment of compensation.

7. The learned Tribunal held that the claimant has proved that he acquired disability to the extent of 75%. The claimant was receiving an amount of Rs.4,000/- per month as a salary towards working as a driver cum supervisor with his employer. The learned Tribunal taking income of 4,000/- awarded the compensation. The future prospects was awarded at the rate of 50%. The medical expenses of Rs.10,00,000/- were granted by deducting an amount of Rs.25,000/- on certain other terms and conditions. Rs.5,00,000/-

is awarded on account of pain and suffering and consortium amount is granted alongwith compensation. The Insurance Company is, therefore, in appeal mainly on the quantum.

8. The learned Advocate for the Appellant vehemently argued that the learned Member has committed an error by granting future prospects at the rate of 50% instead of 40% in view of judgment in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and ors.***[1]. He further submits that, the Tribunal has committed an error in awarding Rs.5,00,000/- on account of pain and suffering. He submits that the learned Tribunal has committed a mistake. Though he argued other grounds but this Court does not find though grounds to be substantiated.

9. The learned Advocate for the Original Claimant - Appellant in First Appeal No.34079 of 2018 vehemently argued that, the learned Tribunal has erred in granting only Rs.10,00,000/- towards medical expenses when the claimant has clearly proved the medical bills of Rs.13,51,037/-. He has examined doctor to prove his bills. The learned Tribunal ought to have considered the loss of earning

1 **2017 (16) SCC 680**

capacity to the extent of 100%, though the disability is only to the extent of 75%. Considering that the claimant was working as a driver, now he would not be in a position to work as a driver. Thus the loss of earning capacity ought to have been taken to the extent of 100%. The learned Tribunal has not granted any amount towards loss of comfort pleasure in life etc. The income ought to have been taken at Rs.8,500/- per month as came in the evidence of the employer, who proved at Exhibit-44 showing that the claimant was getting salary of Rs.8,500/- per month. Both the Advocates opposed the appeals on the strength of submissions made in support of their appeals.

10. From reading of the judgment and award, in the background of the submissions it is seen that the Court has awarded the future prospects at the rate of 50%. In view of *Pranay Sethi's* Judgment it ought to have been 40%. Thus, taking the monthly salary of Rs.5,000/- per month, the loss per month ought to have been calculated at the rate of Rs.7,000/- instead of Rs.7,500/- taking disability to the extent of 75%. The same would come to Rs.5,250/-. So far as the multiplier is concerned, this Court finds that the

Tribunal has rightly applied multiplier of 17. Thus the total amount would come to Rs.10,71,000 /-.

11. The next factor for consideration is amount towards medical expenses. From the record it is clear that, the claimant has proved the medical bills of Rs.13,51,037/-. The Court has rightly deducted the amount of Rs.25,000/- which was paid towards advance which was deducted from the final bill. This Court thus finds that the amount towards medical bill ought to have been granted Rs.13,26,037/- instead of 10,00,000/- on the count of medical expenses. Just and fair compensation towards pain and suffering would be Rs.1,00,000/-. So far as travelling expenses of Rs.10,000/- and special diet of Rs.15,000/-, this Court does not find any reason to change the said amount. For loss of amenities also Rs.50,000/- needs to be paid to the claimant instead of Rs.5 lakhs. Thus, considering the above, this Court finds that the following calculation.

<u>CALCULATION</u>

01	Monthly Salary		Rs.5,000/- P.M.
02.	Future Prospects 40%	2000/-	5,000+2,000=7,000 /-.

03.	Disability 75%	5250/-	5,250/-
04.	Multiplier 17 (Deceased was 27 yrs.)	5,250x12x17=	10,71,000/-
05.	Medical Bills		13,26,037/-
06.	Pain & Suffering		1,00,000/-
07.	Travelling Expenses		10,000/-
08	Special Diet		15,000/-
09	Loss of Amenities		50,000/-
	Total		**25,72,037/-** with interest as per tribunal award.

12. So far as the loss of earning is concerned, this Court finds that the claimant can still do some other work if not as a driver. No error is thus committed in making the calculation of loss of income. For all these reasons this Court finds that the proper compensation would be of Rs.25,72,037/-.

13. The Appellant has deposited the entire amount of the compensation alongwith interest as a condition for grant of stay in view of order dated 31st August 2017. By an order dated 9th April 2018, this Court allowed the claimant to withdraw the 50% of the amount deposited in the Court with accrued interest and the said amount is withdrawn. The claimant was further permitted to withdraw the amount of Rs.3,00,000/- vide order dated 23rd January

2023. The remaining amount is lying presently in the office of this Court.

14. The claimant is entitled for compensation of Rs.25,72,037/- along with interest @ 7% p.a. from the date of filing claim petition till entire amount is deposited in this Court, since the amount after withdrawal of 50% and thereafter Rs.3,00,000/-, the remaining amount still lying in the office of this Court to be disbursed to the claimant from the amount of Rs.25,72,037/- alongwith accrued interest. The excess amount alongwith accrued amount be refunded to the Appellant in Appeal No. 4495 of 2023 i.e. Insurance Company.

15. Award be drawn up accordingly.

16. Both First Appeals stand disposed off.

17. Interim Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]

D. A. Ethape, P.A.