IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.725 OF 2019

Shriram General Insurance Co. Ltd.	]	
Thr. Its Thane Office,	]	(Org. Opponent
Office No.106, Road No.22, Lodha	]	No.2)
Suprumus-2, Wagle Estate, Near New	]	**...Appellant**
Passport Office, Thane-West, Pin-400 604	]	

Versus

1. Arjun Prabhakar Gajare	]	
Age-18 years, Occ : At Present Nil	]	
R/at At present Prakash Pandurang Wagaj,	]	(Org.
Shetfal Tal, Mohol, District-Solapur.	]	Petitioner)
2. Mohd. Mustafa Khan S/o Feroz Khan	]	(FA sand
Age-Adult, Occ : Business	]	dismissed
R/at House No.16-85, Zerpet, Humnabad,	]	against R/No.2
Bidar, Kamataka.	]	as per RJ-II
(Ower of Truck No.KA-39/6063 involved in	]	dated 18/12/23
the Accident)	]	**....Respondents**

Mr. Nikhil Mehta i/b KMC Legal Venture, for the Appellant.
Mr. R.S. Alange, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th MAY 2024

ORAL JUDGMENT :-

1. The issues involved in this appeal are date of

accident and rate of interest is given on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that as per the evidence produced on record the date of accident is shown as 2nd April, 2011 whereas, it is Claimant's case that date of accident is 1st April, 2011 but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has awarded 9% interest on compensation amount, which is on higher side, it be reduced. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondent/Claimant submits that no ground is taken in the written statement about the date of the accident by Appellant/Insurance Company and no witness has been examined in that regard. Learned counsel further submitted that Tribunal has awarded proper interest as the Claimant has suffered 60% permanent physical disability. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

5. The Appellant/Insurance Company had not taken defense before the Tribunal in their written statement about the date of accident. Moreover, accident is not disputed by the Appellant/Insurance Company hence, I do not see merit in the contention that accident did not happened on 1st April, 2011. No evidence is produced on record to prove that accident happened on 2st April, 2011. It appears from the evidence of Dr. Rahul Kolekar at Exhibit-165 that on 1st April, 2011, he treated the Claimant and he was treated at midnight hence, the date of complaint is mentioned as 2nd April, 2011. While dealing with the issue of date of accident, the Tribunal has observed that from the evidence of Dr. Rahul Kolekar it establishes that accident occurred on 1st April, 2011 immediately, after the accident, the Claimant was admitted in his hospital. Hence, I do not see merit in the contention that accident did not happened on 1st April, 2011. While awarding compensation, the Tribunal has awarded 9% interest on compensation amount. In my view, it is on higher side hence, I am considering 7.5% interest per annum.

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

ORDER

i. Appeal is partly allowed.

ii. The Claimant is entitled interest @ 7.5% interest per annum on the compensation amount awarded by the Tribunal instead of 9%.

iii. The Appellant/Insurance Company is permitted to withdraw excess interest amount of 1.5% out of deposited amount.

iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

v. The Claimant shall pay deficit Court fees on enhanced amount, as per Rule.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)