IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 179 OF 2021
WITH
CROSS OBJECTION (ST) NO.12908 OF 2023

Reliance General Insurance Co. Ltd. }
Add : Heritage House, Ground Floor, }
6 Ramabai Ambedkar Road, Pune-411 001. } **...Appellant**

Versus

1. Sushil Sahebrao Gaikwad }
Age-43, years, Occ : Business }
R/at Bhambavade, Matru-Swapna Building, }
Taluka-Bhor, District-Pune. }

2. Prashant Tours and Travels }
Through Proprietor }
Shri.Prashant Chavan, }
R/at 17, Somwar Peth, Pune } **...Respondents**

Mr.Pandit Kasar, for the Appellant.
Mr.Yuvraj narvankar, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

. The Appellant-Insurance Company has preferred this Appeal against the judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Pune.

2. The Claimant's have also preferred Cross Appeal for enhancement of the compensation as Appeal and Cross Objection are against same judgment and order, hence, I am deciding it by this common judgment.

3. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered 3% of Rs.25,00,000/- which was deposited in the bank account of the Claimant as income of the Claimant which is not proper. No evidence was produced on record to show that how the Rs.25,00,000/- were deposited in the bank account of the Claimant and whether the Claimant was acting as Commission Agent in Agricultural Produce Market Committee, Bhor (for short 'APMC'), but these facts are not considered by the Tribunal. The learned counsel further submitted that, the Tribunal has considered Rs.4,000/- per month as income from agricultural land, which is not proper. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondent-Claimant that, the Claimant was working as Commission Agent in the APMC. The Claimant is owner of 12

acres agricultural land. He has suffered 50% disability. The Income Tax Return are produced on record to prove the income of the Claimant. While awarding compensation, the Tribunal has not awarded compensation for prosthetic limb maintenance, it be awarded.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune.

6. To prove the income, the Claimant has examined himself at Exhibit-38. He has stated that he was doing business as a grain merchant and he was looking after the agricultural land of his family. The license issued by the APMC, Bhor was filed on record to show that, he was doing business. The 7/12 extract and account extract Form No.8 produced on record. While dealing with the issue of income of the Claimant the Tribunal has observed that, the 7/12 extract filed on record shows that the Claimant was taking crops from the said land and due to disability the Claimant is unable to do any work and there was restriction to supervise the cultivation work also. In respect of business income, the Tribunal has observed that, the bank

account at Exhibit-60 shows that there was transaction about amount of Rs.25 lakhs in a year in the account of the Claimant, it is in respect of business of the Claimant as a Commission Agent in APMC, Bhor. Having regard to normal course of business, a Commission Agent earns around 3% income from the transaction. On that basis the Tribunal has considered yearly income of the Claimant at Rs.75,000/- and the Tribunal has considered agricultural income at Rs.4,000/- per month for loss of manual work and supervision. I do not find infirmity in it.

7. In my view, to prove the fact that, the Claimant was working as a Commission Agent in the APMC, Bhor. He has produced license on record at Exhibit-59 which shows that, the Claimant was working as a Commission Agent. The Income Tax Returns are filed on record to show the income of the Claimant. It is contention of the learned counsel for the Appellant-Insurance Company that how the Tribunal come to the conclusion of 3% of the amount of Rs.25 lakhs. In my view, the bank account entries shows the transaction of Rs.25 lakhs in the bank account of the Claimant. The income of the Commission

Agent is varies in APMC's. As it has come on record the Claimant was earning as a Commission Agent and the bank entries shows the income, on that basis the Tribunal has considered monthly income of the Claimant at Rs.6,250/- which is proper. It has come on record the Applicant's family owns 12 acres agricultural land. The Claimant has suffered 50% disability but his functional disability is 100%. The Tribunal has considered income of Rs.4,000/- per month for loss of supervision which is proper.

8. It is contention of learned counsel for the Respondent-Claimant that, the Tribunal has not awarded the amount for maintenance of prosthetic limbs. As per view of the Hon'ble Apex Court in the case of ***Mohd. Sabeer @ Shabir Hussain V/s. Regional Manger, U.P. State Road Transport Corporation***[1]***,*** the Claimant is entitled for maintenance of prosthetic limb. Hence, I am considering Rs.5 Lakhs for maintenance of prosthetic limb for life time.

9 In view of above, I pass following order.

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1 **Civil Appeal Nos.9070-9071 of 2022 decided on 9th December 2022.**

ORDER

(i) The Appeal is dismissed.

(ii) Cross objection is allowed.

(iii) The Claimant is entitled for enhanced amount of Rs.5 lakhs.

(iv) The Appellant-Insurance Company shall deposit enhanced amount within eight weeks after receipt of the order.

(v) The Claimant is permitted to withdraw the deposited amount.

(vi) The statutory amount in Appeal alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)