IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.537 OF 2023

1. Reliance General Insurance Co. Ltd. 4th Floor, Chintamani Avenue, Next to Virvani Industrial Estate, Off Western Express Highway, Goregaon (E), Mumbai-400053	}	(Org. Respondent No.2) **...Appellant**

Versus

1. Mrs.Ujwala Jitesh Koli Age-30 years, R/at Room No.9, Dwarka Sitaram Koli Chawal, Sion-Mahim Link Road, dharavi, Mumbai-400017.	}	
2. Mr.Rajesh Shivnath Singh Prop : R.A.N. Infrastructure R/at Lokmanya Nagar, Prabhu Niketan Chawl, Tagore Nagar, Station Road, Vikhroli (West), Mumbai-400 083	}	(No.1 is Org. Claimant & No.2 is Org. Respondent No.1. **...Respondents**

Mr.Akshay Kulkarni, for the Appellant.
Mr.Nikhil Mehta i/b Mr.Subra Karmakar, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 7th MARCH 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are income of the

Applicant-Claimant is considered on higher side, at the time of the accident driver of the offending vehicle was not holding effective and valid driving licenses, the compensation awarded on higher side under non-pecuniary heads.

2. It is contention of the learned counsel for the Appellant that, the Tribunal his considered monthly income of the Claimant at Rs.9,967/- per month without any evidence on record, which is on higher side. The learned counsel further submitted that at the time of the accident the driver of the offending vehicle was not holding effective and valid licenses. There was breach of Terms and Conditions of the Insurance Policy. The learned counsel further submitted that the Tribunal has awarded Rs.2,00,000/- under future treatment and Rs.3,00,000/- for pain and suffering, which are on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, due to accidental injuries the Claimant has suffered 90% disability and there is 100% functional disability as right hand of the Claimant is amputated.

The learned counsel further submitted that at the time of the accident the Claimant was working as Autocad Draftsman and she was earning Rs.13,000/- per month, but Tribunal has considered monthly income at Rs.9,967/-, which is proper. Considering disability of the Claimant, the Tribunal has awarded compensation properly. No interference is required in it.

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

5. Due to accidental injuries Claimant has suffered 90% permanent partial disability and his right hand is amputated.

6. Considering the evidence on record the Tribunal has considered disability to the extent of 50%. I am unable to understand the observations of the Tribunal as to prove the disability. The Claimant has examined Dr.Naresh Khanna, P.W.-4. The disability certificate is at Exhibit-43. PW-4 has stated that, due to accidental injuries the Claimant has suffered 90% permanent partial disability and his right arm is amputated. As right hand of the Claimant is amputated, there is 100%

functional disability. At the time of the accident the Claimant was working as Autocad Draftsman due to amputation of the right arm, the Claimant is unable to do her work. Hence, I am considering 100% functional disability. To prove the income the Claimant has examined AW-2 Sudhir Salekar, Manager of Jay Consulting Engineering, where the Claimant was working. He has stated that, he was giving Rs.13,000/- per month salary to the Claimant. The Salary Certificate is at Exhibit-39. Considering the evidence on record the Tribunal has considered monthly income of the Claimant at Rs.9,967/-. I do not find infirmity in it.

7. To prove the defence that, at the time of the accident the driver of the offending vehicle was not holding effective and valid driving licenses. No evidence was produced on record by the Appellant-Insurance Company. Hence, I do not see merit in it. As the Claimant has suffered 100% functional disability. She has lost her job due to disability. Hence the compensation awarded under the non-pecuniary heads are proper.

8. In view of above, I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant is permitted to withdraw the deposited amount along with interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Investment order is dissolved.

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

(SHIVKUMAR DIGE, J.)