

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 819 OF 2022

Reliance General Insurance Company Ltd.)
 570, Naigaon Cross Road, Next to Royal Industrial)
 Estate, Wadala (W), Mumbai – 400031)
 ... Appellant

Versus

- 1 Kum. Jaibunnisa Shaikh)
 Age – 5 Years, Minor Through Mother and next)
 friend Rahmat Bano Hakim Shaikh)
 R/o. Room No. 603, C/11, MHADA Bldg., New)
 Police Chowki, Shivaji Nagar, Govandi, Mumbai)
 ... Original Claimant
- 2 Ranjana Dadabhau Pokharkar)
 1075, 1st Floor, Birla Complex, Kalamboli,)
 Tal. Panvel, Dist. Raigad, Panvel -410206)
 (Owner of Trailer No. MH-06-AC-9585))
 ... Respondents

Ms. Shalini Shankar, Advocate for the Appellant.

Mr. Mujtaba Shaikh a/w. Ms. Meenaz Mozawala i/b. Rajendra Rathod,
 Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH, 2024.

Oral Judgment :

1. The issue involved in this Appeal is accident occurred due to negligence of the Claimant and compensation is awarded on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that the Claimant was walking along the road negligently. She did not follow the traffic rules and came in front of motor trailer, due to which, accident occurred. The Claimant is responsible for the accident but Tribunal has not considered this fact and has awarded compensation on higher side. Hence, requested to allow the Appeal.

3. It is contention learned counsel for the Respondent/Claimant that accident occurred due to sole negligence of the driver of offending vehicle as he gave dash to the Claimant, she was 4 years old at the time of accident. Due to said dash, the Claimant had sustained injuries and she has suffered 40% permanent partial disability. The Tribunal has considered all the aspects while passing judgment and order and no interference is required in it.

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

5. It is claimant's case that on 21st July, 2014 at about 4:00 p.m. The minor Claimant was walking on Ghatkopar - Mankhurd Link Road. When she reached in front of Municipal High School, near

service road Govandi, one motor trailer bearing registration No.MH-06-AC-9585 came in high speed, in a rash and negligent manner and gave dash to minor Claimant. Due to heavy dash, the minor Claimant fell down on the road and suffered injuries to various parts of the body. The offence was registered against the driver of offending vehicle. To prove the negligence of the driver of offending vehicle, the Claimant has examined herself through next friend at Exhibit-17. She has stated that accident occurred due to sole negligence of the driver of offending trailer. To corroborate her case, the Claimant has placed on record F.I.R. at Exhibit-23, the statement of next friend recorded by the police at Exhibit-24 and spot panchanama at Exhibit-25. The Respondents have not examined any witness in support of their defense.

6. While dealing with the issue of negligence, the Tribunal has observed that offence was registered against the driver of offending vehicle. The police papers produced on record shows that accident occurred due to negligence of the driver of offending vehicle. I do not find infirmity in it. In my view, the driver of offending vehicle gave dash to the Claimant, when she was walking on the road. Moreover, to prove the negligence of the Claimant, the driver of offending

vehicle did not step into witness box. Hence, I do not see merit in the contention that accident occurred due to sole negligence of the Claimant or contributory negligence of the Claimant. The Claimant has suffered 40% permanent partial disability due to accidental injuries. At the time of accident, she was 4 years old. Due to disability, she has to suffer for her whole life. The Tribunal has considered all this aspects and on that basis the compensation is awarded, which is proper.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)