IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 561 OF 2020
WITH
CROSS OBJECTION (ST) NO. 31749 OF 2019

Bajaj Allianz General Insurance Co. Ltd. G.E. Plaza, Airport Road, Yerwada, Pune- 411006.	….Appellant (Org Insurer)

Versus

1. Mr. Karan Pratap Maniar Age 35 years, presently, Occ-Not Known, Through next friend & Mother Smt. Meera Pratap Maniar Aged- 73 years presently, Occ- Not Known, R/at 17/17, Patel House, C.P. Street, Fort Mumbai-400001.	(Org. Claimant)
2. Shri. Ajay Gulati Aged adult Occ-Not Known, R/at D-306, Steel Chambers, Kalamboli, Navi Mumbai- 410 221. Also At Mount Unique Building, Pedder Road,Mumbai 400026. Also At 16, Piramal Mahal, Warden Road, Near Parasi General Hospital, Mumbai- 06.	(Org. Opposite Party) … Respondents.

Mr. D. S. Joshi a/w Mr. Pradyumna Thakur/Desai, Advocate for the Appellant.
Mr. Saumen S. Vidyarthi a/w Ms. Ishita Bhole a/w Adv. Mohit Turakhia i/by Adv. Saumen Vidyarthi, Advocate for the Respondent No. 1 & Cross Objectionist.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL, 2024.

ORAL JUDGMENT. :

1. The Appellant/Insurance Company has preferred an Appeal against the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal"). The Claimant has also preferred Cross Objection against the same Judgment and Order. As both appeal and cross objection are against the same Judgment and Order, hence, I am deciding it by this common Judgment.

2. It is contention of learned Counsel for Appellant/Insurance Company that initially when report was given to the police, it was informed that the car in which the Claimant was traveling was hit by unknown vehicle, due to which, it turned turtle and the Claimant was injured in it, but in Claim Petition, it is mentioned that due to rash and negligent driving of the Driver of the Car, the said car dashed the divider and turned turtle. There was negligence of driver of other vehicle, who dashed the car, but this fact is not considered by the Tribunal. There is no FIR of the said incident, hence, requested to allow the Appeal. Learned Counsel further submitted that the Claim Petition was dismissed for default in the year 2013, again it was restored in the year 2017. The Claimants are not

entitled for interest for these 4 years and 9 months period if they succeed in the Appeal, but this fact is not considered by the Tribunal.

3. Learned Counsel for the Respondent/Claimant submitted that admittedly, due to accidental injuries, the Claimant has suffered 80% physical permanent disability, but it is 100% functional disability as, there is injury to the brain of the Claimant. The Tribunal has awarded compensation amount on lower side, it be awarded, hence, requested to allow the Cross Objection and dismiss the Appeal filed by the Insurance Company.

4. I have heard both learned Counsel, perused the Judgment and order passed by the Tribunal.

5. It is Claimant's case that on 13/02/2005 at about 8:10 a.m., he along with his friends were proceeding in the motor car bearing registration no. MH-06-M-9701 on Mumbai Pune Express Highway. When the car reached in the vicinity of Madap Village, Near Khalapur Toll Naka, due to excessive speed and rash and negligent driving of the driver of the car, it dashed the divider and turned turtle, due to which, the Claimant and other occupants sustained serious injuries. Due to accidental injuries, the Claimant was admitted in various hospitals. The Claimant has suffered 80% physical

permanent disability, but he has suffered 100% functional disability.

6. It is contention of learned Counsel for the Appellant/Insurance Company that initially report was given to the police about the accident by Neel Patel, who was occupant of the car. In the said Report, it was stated that the car, in which they were proceeding, was dashed by one unknown vehicle, due to which, the said car turned turtle, it shows that the car was dashed by other vehicle. Neel Patel is examined as witness at Exhibit 30. He has stated that he along with Claimant and other friends were proceeding to Mumbai. The car was in high speed, driver Shri. Gulati lost his control and banged on divider and car turned turtle. The driver Shri. Gulati wanted to reach home early therefore, he was driving car in high speed. He further stated that due to the negligence of the driver Gautam Gulati, the accident occurred. The speed of car at the time of accident was 140 km.p.h. On the same day, police visited the spot of accident and recorded his statement. He further stated that whatever he has stated before the Tribunal, same statement was given by him to the police. The Police took his signature on blank paper. He is not conversant with marathi language. No other vehicle is involved in the accident. In cross examination, this witness admitted that he is B.com,

at that time he did not realise that he should not sign on the blank paper. He did not make enquiry to find out what was written in his statement, when he signed the paper, he was conscious. He has no documentary proof except his bare words to show that accident took place due to rash and negligent driving of Shri. Gulati. He denied the suggestion that his statement was recorded by the Police as per his say and one unknown vehicle dashed their car, therefore, accident took place.

7. While dealing with issue of negligence, the Tribunal has observed that, on perusal of police papers, it is crystal clear that driver of offending vehicle bearing registration no. MH-06-M-9701 was at fault. The said car was insured with Insurance Company. Hence, Insurance Company is liable to pay compensation. I do not find any infirmity in it. In my view, no evidence was produced on record to show that the other vehicle was involved in the accident. The witness Neel Patel has categorically stated that the accident occurred due to negligence of the driver of the offending car. The Appellant/Insurance Company has not disputed about happening of the incident and injuries sustained to the Claimant. The Appellant/Insurance Company should have examined the police officer, who recorded the statement

of Neel Patel. The Hon'ble Apex Court in the case of ***National Insurance Company vs. Chamundeswari & ors reported in 2022(1) Bom C.R. 102 SC***, has held that weightage should be given to the evidence given before the Court than contents of FIR. Hence, I do not see merit in the contention that accident occurred due to negligence of driver of unknown vehicle. It is contention of learned Counsel for Appellant that no FIR was lodged in respect of accident. In my view, though FIR in respect of accident is not registered, the insurance company has not disputed about occurrence of the accident, hence I do not see merit in contention that no FIR was lodged in respect of accident. The learned Counsel for the Claimant submitted that, at the time of accident, the Claimant was 22 year old. He has suffered Head and Brain injury i.e. 1) Fracture Parietal bone of skull (2) Diffuse Axonal injury (3) Subdural haemorrhage/haematoma (4) Low glasgow coma scale (5) Midline shrift of braing (6) Paralysis of entire left side (7) Loss of vision in left eye (8) Complete deafness in left ear. The Tribunal has awarded lumpsum amount of Rs. 20 lakh for disability. In my view, the Claimant has suffered 80% permanent physical disability and 100% functional disability. At the time of accident, the Claimant was 22 year old and since the date of accident, he is bedridden. The Tribunal has considered monthly income of claimant at Rs. 7,750/- p.m. The proper multiplier is 18. Considering this, the future loss of income comes to Rs. 25,11,000/- The Tribunal has awarded Rs. 75,000/- for Loss of Amenities in Life, I am considering it Rs. 10,00,000/-. As Claimant is bed ridden and he is continuously on medication due to accidental injuries. He was 22 years old at the time of accident. He has been deprived to enjoy his life because of disability. The Tribunal has awarded Rs. 5,00,000/- for pain and suffering, it is proper. The Tribunal has awarded Rs. 50,000/- for Special Diet and Conveyance. As, the Claimant has to take Special Diet for rest of the life and he has to go to hospital for further treatment hence, I am considering addition Rs. 2,00,000/- for it. The Tribunal has awarded Rs. 5,00,000/- for future medical expenses, considering nature of injuries, I am considering it at Rs. 10,00,000/-. The Tribunal has not awarded the compensation for nursing expenses, I am considering it Rs. 1,62,000/-.

8. It is contention of learned Counsel for the Claimant that as per view of the Hon'ble Apex Court in the case of ***Kavita v. Deepak (2012) 8 SCC 603,*** claimant is entitled for inevitable expenses i.e. for attendance charges, physio therapy, medication, Special diet and

Conveyance. In the present case the Claimant has suffered 80% permanent disability, his functional disability is 100%, he is bedridden. At the time of accident he was 22 years old. He has to spend his entire life on bed. His all dreams have obscured due to his disability. As per the view of Hon'ble Apex Court kavita (supra), I am considering inevitable expenses at Rs. 25,20,000/-. The Tribunal has not awarded Loss of Matrimonial and other pleasures of life, I am considering it Rs. 10,00,000/-.

Considering the above calculations, the Claimant is entitled for following compensation.

Loss of Income	Rs. 93,000/-
Medical Expenses	Rs. 10,71,916
Pain and Suffering	Rs. 5,00,000/-
Special Diet and Conveyance	Rs. 2,00,000/-
Loss of Amenities of Life	Rs. 10,00,000/-
Future Loss of Income	Rs. 25,11,000/-
Nursing Expenses	Rs. 1,62,000/-
Inevitable Expenses	Rs. 25,20,000/-
Loss of Matrimonial & Other pleasures of Life.	Rs. 10,00,000/-
Total	Rs. 90,57,916/-
Amount awarded by the Tribunal	Rs. 47,89,916/-
Enhanced Amount	**Rs. 42,68,000/-**

9. In view of above, I pass following Order.

ORDER

a) The Appeal is partly allowed.

b) The Cross-Objection is allowed.

c) The Claimant is entitled for enhanced amount of Rs. 42,68,000/- @ 7.5 interest per annum from the date of filing Claim Petition, till the realisation of the amount.

d) The Claimant is not entitled for interest on compensation amount along with enhanced amount for the period of 4 years and 9 months i.e. the period of dismissal of the Claim Petition. The Claimant is not entitled interest on compensation amount of Rs. 25,20,000/- i.e. inevitable expenses.

e) The Appellant/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within ten weeks after receipt of the order.

f) The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

10. The learned Counsel for the Appellant/Insurance

Company requested to stay this Order. The date of accident is of year 13.02.2005 and considering the nature of injuries sustained by the Claimant, I am not inclined to stay the Order.

11. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)