

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 931 OF 2018

The New India Insurance Co. Ltd. }
Division Thane, Gokhale Road, Thane, }
Insurer of Auto Rickshaw No.MH-05-D- } **...Appellant**
1743 } **(Original Insurer)**

Versus

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1. Shri.Sahebrao Babulal Kapure }
Age 68 years, }
R/at B-406, Mahavir Complex, }
Santoshi Mata Road, Kalyan, Dist-Thane. }
2. Mr.Hemant Krishnaji Anup } **...Respondents**
Room No.10, Phule Niwas, Behind } (Respondent
Central Bank, Joshi Bag, Kalyan, } No.1=Original
Dist-Thane. Owner of Auto Rickshaw } Applicants and
No.MH-05-1743. } Respondent No.2
= Opp. Party)

Mr.Himanshu Takke i/b Mr.Milind V. More, for the Appellant.
Mr.T.J. Mendon, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is future income

awarded to the Claimant is on higher side.

2. It is contention of the learned counsel for the Appellant that, while awarding compensation the Tribunal has awarded 25% amount as loss of future earning to the Claimant. The learned counsel further submitted that, the Claimant was working in Mumbai Municipal Corporation as Chief Department Duty Officer, Grade-II. After the accident he continued his service so, no question of 25% loss of future earning arises. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimants that due to accidental injuries the Claimant has suffered 40% physical permanent disability. The Tribunal has considered this aspect and on that basis order is passed, which is proper and no interference is required in it. He relied on *Union of India V/s. Oswald Anthony Athayde & Ors.*¹.

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

1 2005 ACJ 82

5. While calculating compensation the Tribunal has considered annual income of the Claimant at Rs.13,481/- and has considered loss of future earning at 25% of the annual income. Admittedly, the Claimant was working as Duty Officer in Mumbai Municipal Corporation. After the accident he is continued in service and he is getting full salary. Due to permanent disability there is no deduction in his salary. So no question of awarding 25% future earning is arises. Hence the amount under the head of loss of future earning considered by the Tribunal is not proper and I am setting aside it.

6. It appears from record that, the Tribunal has awarded Rs.25,000/- for pain and suffering it is on lower side. So I am considering Rs.50,000/- for pain and suffering. The Tribunal has awarded Rs.25,000/- for loss of amenities in life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for special diet, I am considering it at Rs.25,000/-. If this enhanced amount of Rs.75,000/- is deducted from Rs.4,45,000/-, it comes to Rs.3,70,000/-. It is excess amount, the Appellant's are entitled for this amount.

7. I have gone through the case law cited by the learned counsel for the Respondents-Claimants, the facts of cited case and case in hand are different.

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

ORDER

(i) The Appeal is allowed.

(ii) The Appellant is permitted to withdraw Rs.3,70,000/-along with proportionate interest out of the deposited amount.

(iii) The Claimant is permitted to withdraw balance amount with proportionate interest.

(iv) The statutory amount be transferred to the Tribunal. Parties are at liberty to withdraw it.

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

(SHIVKUMAR DIGE, J.)