IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1168 OF 2013

WITH

CROSS OBJECTION (ST.) NO. 17377 OF 2013

	United India Insurance Company Limited Motor Third Party Hub Maker-Bhavan No.1, 3rd Floor, Sir V.T.Marg, Mumbai-400 020	))))…	Appellant
	versus		
1	Mala Yogesh Bhatia C/3, Banoo Mansion, Kemps Corner, Mumbai – 400 036	)))	
2	Navinchandra Vishanji Bhairav Stone Industries, Shop No. 203, Bonsari Village Chunabhatti, Turbha, District : Thane.	)))…	Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocates for the Appellant.
Ms. Ketki Gokhale i/b. Mr. Avinash M. Gokhale, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

Oral Judgment :

1. This appeal is preferred by the appellant-Insurance Company against the judgment and order dated 14th October, 2009 passed by the Motor Accident Claims Tribunal, Mumbai, (for short “the Tribunal”) in Claim Application No. 112 of 2001. The claimant has filed cross-objection for

enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance that the Tribunal has awarded amount of Rs.1,00,000/- for permanent disability without any evidence on record, which is on higher side. Learned counsel further submitted that the Tribunal has awarded Rs.3,40,000/- for loss of future income, which is on higher side. Learned counsel further submitted that after the accident, the claimant continued to work and she was earning income, so there is no actual loss of income to the claimant but these facts are not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that due to accidental injuries, the claimant has suffered 92% permanent physical disability. Her right leg, above knee, is amputated. After the accident, the claimant is unable to do any work. Her movement are restricted. The Tribunal has not awarded the amount for future medical treatment. No amount is awarded for prosthetic leg. The compensation awarded under other heads is on lower side. The Tribunal has considered monthly income of the claimant on lower side. Hence, requested to allow the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. The disability of 92% of the claimant has not been challenged by the appellant-Insurance Company. Admittedly, due to accidental injuries, the right leg of the claimant, above knee, has been amputated.

6. It is the claimant's case that she is self-employed. To prove her income, the claimant has examined herself. She has stated that she was self-employed at the time of accident and she was carrying business of painting and share-broking. She was getting monthly income of Rs.6,000/-. In support of her evidence, the claimant has produced income tax returns on record to prove her income. The income tax returns of the year 1999-2000 shows income of the claimant at Rs.51250/- and for the year 2000-2001 shows income of the claimant at Rs.68,657/-. While dealing with the issue of income, the Tribunal has observed that after the accident, the claimant's work is continued, hence, the Tribunal has considered her income at Rs.20,000/-. I am unable to understand the observations of the Tribunal as though the claimant has suffered 92% permanent disability, her functional disability is 100%. As per the view of Hon'ble Apex Court in the case of ***Mohd. Sabeer @ Shabir, Hussain versus Regional Manager, U.P. State Road Transport Corporation reported in AIR 2023 SC 186*** though the claimant continues to earn the

income after accident, she is entitled for compensation. The Tribunal has observed that as per Income Tax Returns, the claimant's monthly income comes to Rs.5,000/-. Hence, I am considering Rs.5,000/- as monthly income of the claimant. The Tribunal has awarded Rs.50,000/- for loss of amenities in life, which is proper. The Tribunal has not awarded compensation for pain and suffering, I am considering it at Rs.50,000/-. The Tribunal has awarded Rs.20,000/- for special diet, it is proper. The Tribunal has awarded Rs.10,000/- for conveyance, I am considering it at Rs.20,000/-. The Tribunal has awarded Rs.11,21,511/- for medical expenses, which is proper. The Tribunal has not awarded loss of income for period of hospitalization, I am considering it at Rs.15,000/-. The Tribunal has awarded Rs.1,00,000/- for permanent partial disability **a**s this Court has considered only loss of earning capacity, it would come under the said head**.** The Tribunal has not awarded amount for prosthetic leg, I am considering it at Rs.5,00,000/-.

6.1. The Tribunal has awarded 6% interest on compensation amount, it should be 7.5% interest.

6.2. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income	Rs.	60,000.00
Loss of Income (Rs. 60000/- X 17 (multiplier)	Rs.	10,20,000.00
Medical Expenses	Rs.	11,21,511.00

Future Treatment for Prosthetic Limb	Rs.	5,00,000.00
Conveyance	Rs.	20,000.00
Special Diet	Rs.	20,000.00
Pain and Suffering	Rs.	50,000.00
Loss of Amenities	Rs.	50,000.00
Loss of Income during Hospitalization	Rs.	15,000.00
Total Compensation.	**Rs.**	28,56,511.00

The Tribunal has awarded Rs.16,61,511/-, if this amount is deducted from the amount of Rs.28,56,511 /- considered by this Court, it comes to Rs.11,95,000/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal No.1168 of 2013 is dismissed. No order as to cost.
2. Cross Objection Stamp No.17377 of 2013 is allowed.
3. The claimant is entitled for enhanced compensation of Rs.11,95,000/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
4. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
5. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
6. The claimant shall pay deficit court fees on enhanced amount as per Rule.

7. The statutory amount in First Appeal No.1168 of 2013 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)