

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1011 OF 2023

The Divisional Manager	}	
Reliance General Insurance Co. Ltd.,	}	
The Thane Divisional Office, Kalpataru	}	
Prime, 1 st Floor, Unit No.D-3, Road No.16,	}	
Ambika Nagar, Wagle Industrial Estate,	}	
Thane (West), District-Thane.	}	...Appellant

Versus

NILAM
SANTOSH
KAMBLE

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1. Renu Navin Pandey	}	
Aged-33 years, Occ : At present Nil,	}	
R/at B-406, Shree Vakratund CHS Ltd.,	}	
Savodaya Compex, Mira Bhayander Road,	}	
Near Golen Nest, Mira Road (E), District-	}	
Thane (The injured Applicant filed their	}	
Claim Application through Her Husband	}	
Mr.Navin Paramhans Pandey)	}	Original Applicant
 2. Mr.Rakesh Vinayak Manager	 }	
21, Navghar Zopadpatti, Ajinkya R. Sangh,	}	
Indira Nagar, Navghar Road, Bhayander (E),	}	
District-Thane.	}	...Respondents

Ms.Shalini Shankar, for the Appellant.
Ms.Rina Kundu, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are the income and disability of the Claimant is considered on higher side

2. It is contention of the learned counsel for the Appellant that, the Tribunal has considered annual income of the Claimant at Rs.2,31,087/- without any evidence on record, which is on higher side. The learned counsel further submitted that, doctor who has issued disability certificate to the Claimant was not treating doctor. The Tribunal has considered disability of Claimant at 15%, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent that, the Claimant was doing business of beauty parlour. She was earning Rs.3,17,718/- per annum. The Tribunal has considered her income on lower side. The learned counsel further submitted that, the Claimant has suffered 20% permanent physical disability, but the Tribunal has considered 15% only. The order passed by the Tribunal is legal and valid, 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), Thane.

5. To prove the income, the Claimant has examined herself. She has stated that due to accidental injuries she has suffered 25% permanent physical disability. She was running beauty parlour at Miraroad and earning Rs.2,32,360/- per annum. After the accident she is unable to do any work. Nothing elicited in her cross-examination to disbelieve her evidence.

6. In support of evidence of PW-1 the Claimant has examined Deepaksingh, Income Tax Inspector at Exhibit-60. He has stated that, the Claimant has filed Income Tax Returns for the Assessment Year 2014-15, 2015-16 and 2016-17 these are at Exhibit-61 to 63. In cross-examination he has admitted that, after the accident the Claimant has submitted Income Tax Returns for the year 2016-2017 and in the said Assessment Year the income is reduced as compared to Assessment Year 2015-16. He admitted that, he has not personally verified the assessment.

7. While dealing with the issue of income of the Claimant, the Tribunal has observed that, the Income Tax Returns of the year 2014-15 shows the income of Rs.3,24,326/- and after deducting tax the Tribunal has considered yearly income of the Claimant at Rs.2,31,087/-. I do not find infirmity in it.

8. In my view, the Income Tax Returns shows income of the Claimant prior to date of accident and on that basis Tribunal has considered annual income, which is proper.

9. To prove disability the Claimant has examined Dr.Sameer Lokare of Lotus Multispeciality, Mulund. He has stated that after perusing the medical papers and examination of the Claimant he has assessed the disability of 26% and issued the disability certificate which is at Exhibit-70 and form B Exhibit-71. In cross-examination he admitted that, he has not treated the Claimant. On the basis of the evidence the Tribunal has observed that the disability given by the doctor appears to be excessive and he has considered disability of 15%. I do not find infirmity in it.

10. Considering the above reasons, the Appeal is devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant is permitted to withdraw deposited amount along with accrued interest.
- (iii) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)