

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 393 OF 2018

Bombay Electric Supply and Transport
Undertaking, a Public Undertaking of Municipal
Corporation of Greater Mumbai
Having its office at Electric House, Colaba,
Mumbai-400 005

... Appellant

Versus

Mr. Manish Devidas Thakker
Aged : 30 years, residing at 14/15, Umiya Bhawan,
Rajendra Prasad Road, Opp. Vardhaman Nagar,
Bhandup (W), Mumbai-400 078

... Respondents

.....

Mr. Sagar Shetty a/w. Mr. Shubham More, Advocate for the Appellant.
Mr. Amol Gatne, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th APRIL, 2024

ORAL JUDGMENT. :

1. The issue involved in this appeal is compensation awarded to the claimant is on higher side.

2. It is contention of learned counsel for the appellant that the Tribunal has awarded Rs.10,50,000/- as loss of future income for suffered disability which is on higher side, it has been considered without any evidence on record. Learned counsel further submitted that the Tribunal has awarded Rs.4,94,000/- for medical expenses. No evidence is produced on record to prove the said expenses. Learned counsel further

submitted that the Tribunal has awarded Rs.3,00,000/- for pain and suffering which is on higher side. Learned counsel further submitted that at the time of accident the claimant was talking on cell phone and while talking, he was driving motorcycle. The accident occurred due to sole negligence of the claimant, but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent that due to accidental injuries the claimant has suffered 70% permanent partial disability, but there is 100% functional disability. He has not continued his business due to disability. Learned counsel further submitted that the issue of negligence was not raised in the written statement nor no evidence was produced on record to show that at the time of accident the claimant was riding motorcycle while talking on cell phone. The Tribunal has considered all the aspects while awarding compensation and on that basis Judgment and Order is passed, no interference is required in it.

4. I have heard both the learned counsel Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short “**the Tribunal**”). Admittedly, due to accidental injuries the claimant has suffered 70% permanent partial disability. The disability of claimant has not been challenged by the appellant. While dealing with the issue of income of the claimant, the Tribunal has observed that the claimant has

produced on record his income tax returns for the year 2007-08 and 2009-10 at Exhibit Nos. 22 to 24. The Tribunal has considered yearly average income of the claimant at Rs.1,40,000/-. I do not find infirmity in it. In my view, the income tax returns of year 2007-08 shows gross income of the claimant at Rs.1,40,076/- and the income tax returns of year 2009-10 shows gross total income of Rs.1,71,377/-. The Tribunal has considered yearly average income at Rs.1,40,000/- which is proper. AW-2 and AW-3 Dr. Uday Mhaske and Dr. Shayam Mukhi have stated that due to accidental injuries the claimant has suffered 70% permanent partial disability but while calculating the compensation the Tribunal has considered 50% permanent partial disability which on lower side. It has come on record, after the accident claimant could not continue his business. So it is 100% functional disability. Considering the evidence on record, in my view, the compensation awarded by the Tribunal is proper no interference is required in it. Moreover, the Tribunal has not awarded future prospects if this amount merges in the amount awarded by the Tribunal it will match. The issue of negligence that the claimant was talking on phone was not raised in the written statement, hence I am not considering it. Moreover, no evidence was produced on record in that record. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with interest accrued thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- (iv) Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)

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