IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1650 OF 2009

The New India Assurance Co. Ltd. D.D.No.140400, Vishwas CTS-728A, Near Lalthia Rubber Co., Andheri Kurla Road, Sakinaka, Mumbai-400 072.	}	(Insurer) **...Appellant**

Versus

1. Kum.Mahesh Ashok Supugade Age-7 years, Minor Thr. Father & Next Friend Mr.Ashok R. Supugade R/at Sagar Nagar, Room No.311, Near Saraswati Vidya Niketan, Vikhroli (W), Mumbai.	}	
2. Mr.Vijay Prlhad Babar 19/3, Near ICL High School, 15/B/2, Vashi, New Mumbai. (Owner of Motor Bus No.MH-04-F-3327)	}	(R/No.2)(Opp. Party) **...Respondents**

Ms.Poonam Mital, for the Appellant.
Mr.Bhartkumar Nukte a/w Mr.Devidas More, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th APRIL 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are compensation awarded under the head of the future medical treatment and loss of earning capacity are on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, at the time of accident Claimant was 7 years old. The Tribunal has awarded Rs.2 lakhs for future medical treatment, no doctor was examined to prove that the Claimant was required future medical treatment. The Tribunal has awarded Rs.4 lakhs for loss of earning capacity, it is on higher side. The learned counsel further submitted that at the time of the accident Claimant was 7 years old, so the Tribunal should not have awarded Rs.4 lakhs for loss of earning capacity. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, in Paragraph No.9 of written submission filed by the Appellant-Insurance Company before the Tribunal they have stated that they are ready to give amount of Rs.2 lakhs for future medical treatment. Considering the nature of the injuries and no objection of learned counsel for the Insurance Company before the Tribunal, the Tribunal has

awarded Rs. 2 lakhs. The learned counsel further submitted that, the Claimant has suffered 70% permanent disability, due to accidental injuries. He has unable to do any work. At the time of the accident, he was 7 years old. His entire future life has been ruined due to accidental injuries. The Tribunal has considered all the aspects while passing judgment and order.

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

5. Admittedly, due to accidental injuries, the Claimant has suffered 70% permanent physical disability, his functional disability is 100%. At the time of the accident Claimant was 7 years old. The Tribunal has awarded Rs.2 lakhs for future medical treatment. As per no objection given by the learned counsel for the Appellant-Insurance Company in their written submission. If no objection is given by the Appellant before the Tribunal, they cannot raise same issue before this Court. Hence, I do no see merit in it. The Tribunal has awarded Rs.4 lakhs for loss of earning capacity. The learned counsel for the Appellant-

Insurance Company suggested before the Tribunal to award Rs.3 lakhs for account of disability whereas, the Claimant has claimed is Rs.5 lakhs. Considering the disability suffered by the Claimant, the Tribunal has considered Rs.4 lakhs for loss of earning capacity. In my view, the Appellant has agreed for Rs.3 lakhs before the Tribunal for disability amount. At the time of the accident the Claimant was 7 years old and he is unable to do any work during his entire life. If notional income of Rs.25,000/- to Rs.30,000/- per year is considered by this Court and applied the multiplier as per age of the Claimant alongwith future prospects the amount will go more than Rs.50,000/-. The Tribunal has considered proper income.

6. In view of the above, I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Respondent-Claimant is permitted to withdraw deposited amount by the Appellant-Insurance Company 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.)