

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 748 OF 2017

	Bharti Axa General Insurance Company Limited, Showroom No.9, Millenium Star Building, Near Ruby Hall Clinic, Dhole Patil Road, Pune – 411 001. (Through Mr. Ashwinkumar Gawai – Manager Legal).	...	Appellant
	versus		
1	Prajakta Prakash Kulkarni W/o. Vijay Deshmukh, Age – 43 years, Occupation : Service, R/at: A1/14, Amruta Vihar, Kirkitwadi, Sinhgad Road, Pune.		
2	Mushtaq Ahemad Gawandi, Age : Adult, Occupation : Business, Resident at – H.No.121, Succuro Bardez, Goa.		Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocates for the Appellant.
Mr. S. G. Kale along with Mr. Uday B. Nighot, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is compensation awarded under non-pecuniary heads is on higher side.
2. It is contention of learned counsel for the appellant that while awarding compensation, the Tribunal has awarded Rs.1,00,000/- for

special diet, Rs.1,00,000/- for conveyance, Rs.5,00,000/- for loss of comforts and Rs.10,00,000/- for pain and sufferings. It is on higher side. Learned counsel further submitted that the claimant has suffered 90% disability but the Tribunal has considered it as 100% functional disability. Learned counsel further submitted that the JCB was a commercial vehicle but the Tribunal has considered it as private vehicle and at the time of the accident, the driver of the JCB was not holding effective and valid driving license. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that due to accidental injuries, left leg and left hand index finger of the claimant are amputated. The claimant has suffered 90% permanent physical disability due to the accident. She has been removed from her job, so there is 100% functional disability. The Tribunal has considered all the aspects, on that basis, compensation is awarded. No interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short "the Tribunal").

5. Admittedly, due to the accidental injuries, the claimant has suffered 90% permanent physical disability. Her left hand index finger and left leg below knee have been amputated. At the time of the accident, she was 42 year old and she was a teacher. She has been removed from the service due to accidental injuries. While dealing with

the issue of JCB as commercial vehicle, the Tribunal has observed that the witness examined by the appellant -Insurance Company – Ashwinkumar Gavai, in his evidence, stated that there are three types of policies i.e. policy for two wheeler, private vehicle policy and commercial vehicle policy. He further stated that his office does not have separate form for miscellaneous vehicles. Hence they use the commercial form for policy for miscellaneous vehicle. The Tribunal has further observed that the evidence referred above read together with registration certificate of the offending JCB, it can safely be said that the offending JCB was private vehicle but Insurance Officer used the commercial form for its policy, therefore, the offending JCB was private vehicle and it does not require permit and fitness certificate. It do not find any infirmity in it. In my view, the appellant-Insurance Company has not produced any evidence on record of any witness from the RTO office to prove that the JCB is commercial vehicle and it requires permit and fitness certificate. Without any evidence on record, this Court cannot accept the submission that the JCB was commercial vehicle.

5.1. In respect of the issue of the driver of the JCB was not holding effective and valid driving license, the Tribunal has observed that there is no evidence produced on record to show that the insured – owner of the JCB was aware that the driving license was fake and still he permitted the driver to drive the offending JCB. I do not find infirmity in it. The Hon'ble Apex Court in the case of Iffco Tokio General Insurance Co.Ltd.

Versus Geeta Devi and ors., 2023 SCC Online SC 1398 has observed that in case of fake driving license, the owner of the offending vehicle must be aware that the driver was holding fake driving license. Moreover, no officer is examined from the RTO office to prove that the driving license of the driver of the offending vehicle was fake.

5.2. The Tribunal has awarded Rs.1,00,000/- for conveyance, Rs.1,00,000/- towards special diet and Rs.5,00,000/- towards loss of comforts, Rs. 10,00,000/- towards pain and suffering. It is contention of learned counsel for the appellant that it is on higher side.

5.3. Learned counsel for the respondent No.1/claimant submitted that while awarding compensation, the Tribunal has not awarded future prospects. If 30% future prospects is considered, it would come more than the compensation awarded under non-pecuniary heads. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC),** the claimant is entitled for 30% future prospects. As the Tribunal has not awarded future prospects. If the amount of future prospects is equated with the amount awarded on higher side under the non-pecuniary heads, it would suffice. I am considering Rs.50,000/- for special diet and Rs.50,000/- for conveyance. Thus Rs.1,00,000/- is an excess amount, the appellant-insurance company is entitled for it.

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

ORDER

1. The appeal is partly allowed.
 2. The appellant/Insurance Company is permitted to withdraw Rs.1,00,000/- along with proportionate interest thereon out of the deposited amount.
 3. Respondent No.1/claimant is permitted to withdraw the balance amount along with proportionate interest thereon.
 4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
The first appeal stands disposed of.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)