IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1110 OF 2023

	National Insurance Company Limited, Third Party Hub, 5th Floor, Sterling Cinema Building, Murzban Street, Fort, Mumbai – 400 001.	…	Appellant
	versus		
1	Sandeep Vinaykumar Singh R/at: Plot No.30, Line No.C, R/at – 224, Hind Nagar, Kanpur Road, Lucknow, Uttar Pradesh.		
2	Gayasuddin A.M.H.M.HASAN R/at : Plot No.:30, Lince No.:C, Room No.9, Shivaji Nagar, Govandi, Mumbai – 400 043.	…	Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocates for the Appellant.
Mr. Samrat Ingle along with Mr. T. R. Kale i/b. T. J. Mendon, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th MARCH, 2024.

<u>Oral Judgment. :</u>

1. The issues involved in this appeal are the income of the claimant is considered on higher side and the accident occurred due to sole negligence of the claimant.

2. It is contention of learned counsel for the appellant-Insurance Company that the accident occurred due to sole negligence of the claimant but this fact is not considered by the Tribunal. Learned counsel

This judgment is corrected in view of order dated 2nd April 2024.

further submitted that one truck was stationed on the road, the driver of the said truck opened the door of that truck, the claimant was riding on motorcycle on the said road, due to opening of the door, it dashed against the claimant who was riding the motorcycle, due to the dash, the claimant fell on the road and offending vehicle which was coming from the same direction, ran over the claimant. There was absolutely no fault of the driver of the offending vehicle but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered the income of the claimant on higher side and, on that basis, compensation is awarded, which is excessive. The disability of the claimant was shown excessive. The claimant is continued in job in another company, hence, there is no loss of earning capacity but these facts are not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.1-claimant that the accident occurred due to sole negligence of the driver of the offending vehicle as he could not control the speed when the claimant fell on the road. Learned counsel further submitted that at the time of awarding compensation, the Tribunal has not awarded 50% future prospects, for which, the claimant is entitled. He submitted that the disability certificate is issued by the treating doctor, so no question of excessive disability arises. Due to the accidental injuries, the claimant has suffered 60% disability, on that basis, compensation is awarded.

Learned counsel further submitted that while awarding compensation, the Tribunal has not awarded interest on compensation from the date of filing claim petition, it is awarded from the date of judgment, which is erroneous. Hence, requested to dismiss the appeal.

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

5. To prove the negligence of the driver of the offending vehicle, the claimant has examined himself. He has stated that he fell on the road, the offending vehicle ran over him without keeping safe distance. The claimant further stated that the driver of the offending vehicle did not keep safe distance and the driver of the offending vehicle was charged under Section 184 of the Motor Vehicles Act. While dealing with the issue of negligence, the Tribunal has observed that the driver of the offending vehicle did not take proper care while driving the vehicle and did not keep safe distance between two vehicles. I do not find infirmity in it. In my view, after seeing the claimant fall on ground, the driver of the offending vehicle should have stopped his vehicle immediately but due to high and excessive speed, he could not control the speed and ran over the claimant, it shows his negligence. Moreover, to prove the negligence of the claimant, the driver of offending vehicle did not step into the witness box, hence, I do not see merit in the contention that the accident occurred due to negligence of the claimant.

5.1. While dealing with the issue of the income of the claimant, the Tribunal has awarded compensation on the basis of monthly income of the claimant but the Tribunal has not awarded future prospects. The claimant has suffered 60% permanent disability. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimant is entitled for 50% future prospects but the claimant has not filed appeal for getting it.

5.2. Learned counsel for the respondent-claimant submitted that if this Court is inclined to dispose of this appeal without reducing any compensation amount as fixed by the Tribunal, the claimant would not file any appeal for getting 50% future prospects, or enhancement of compensation and for increasing the rate of interest from 6% to 7.5%. Learned counsel for the respondent submitted that, in case, the appellant-Insurance Company prefers appeal, the claimants will have the right to defend the said appeal and file cross appeal, if required. In my view, as the claimant is not going to prefer appeal for enhancement of compensation amount on the basis of future prospects and other heads including higher rate of interest, the compensation amount awarded by the Tribunal is proper, no interference is required in it.

5.3. It is settled principle of law that the claimant is entitled for rate of interest on the compensation amount from the date of filing of claim petition. Hence, the claimant is entitled for interest from the date of filing claim petition.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimant is entitled for compensation amount as fixed by the Tribunal and as per the interest fixed by the Tribunal from the date of filing claim petition till realisation of the amount.
3. The appellant-Insurance Company shall deposit the interest amount as directed in aforesaid clause (2) within eight weeks from the receipt of the order.
4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)

This judgment is corrected in view of order dated 2nd April 2024.