IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1795 OF 2024

Cholamandalam M.S. General Insurance Co. Ltd.
Dare House, 2nd Floor,
N.S.C. Bose Road, Chennai – 600 001
(Policy No.3373/00495609/000/00)
Policy Valid period from 09.06.2017 to 08.06.2018

Cholamandalam MS General Insurance Co. Ltd.
Oppo.LMS Jewelers, Shriniketan Colony, Rokadiya
Hanuman Colony Road, Rokadiya,
Through its Authorized Signatory ..Appellant
(Orig. Respondent No.2.)

Versus

1. Sangmeshwar @ Sangram s/o Gopinath Tale,
Age 50 yrs., Occ. Business & Agri.
R/o. Jalkot, Tq. Jalkot, District Latur
A/P Shahu Colony, Deglur Road,
Udgir, District Latur

2. Manoj s/o Prabhakar Deshpande,
Age 48 Years, Occu. Driver & owner,
R/o. Tambri Vibhag, Near Ajit Gas Godown ,
Barshi Road, Osmanabad,
Tq. And Dist. Osmanabad
(Owner of Vehicle No.MH-25-T-1838) ..Respondents
(Resp. No.1 Org. Claimant
Resp. No. 2 Org. Resp. No.01)

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Mr. A. G. Choudhari, Advocate for Appellant.
Mrs. S. P. Chate, Advocate for Respondents.

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WITH
CIVIL APPLICATION NO.1361 OF 2025
IN
FIRST APPEAL NO.1795 OF 2024

1. Sangmeshwar @ Sangram s/o Gopinath Tale,
Age 50 yrs., Occ. Business & Agri.
R/o. Jalkot, Tq. Jalkot, District Latur
A/P Shahu Colony, Deglur Road,
Udgir, District Latur

2. Manoj s/o Prabhakar Deshpande,
Age 48 Years, Occu. Driver & owner,

R/o. Tambri Vibhag, Near Ajit Gas Godown ,
Barshi Road, Osmanabad,
Tq. And Dist. Osmanabad
(Owner of Vehicle No.MH-25-T-1838) ..Applicants

Versus

Cholamandalam M.S. General Insurance Co. Ltd.
Dare House, 2nd Floor,
N.S.C. Bose Road, Chennai – 600 001
(Policy No.3373/00495609/000/00)
Policy Valid period from 09.06.2017 to 08.06.2018

Cholamandalam MS General Insurance Co. Ltd.
Oppo.LMS Jewelers, Shriniketan Colony, Rokadiya
Hanuman Colony Road, Rokadiya ,
Through its Authorized Signatory ..Respondent.

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Mrs. S. P. Chate, Advocate for Applicants.
Mr. A. G. Choudhari, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th FEBRUARY, 2025.

ORDER:-

1. The appellant/original respondent no.2 filed present appeal under Section 173 of the Motor Vehicle Act assailing judgment and award dated 06.01.2024 passed by the Motor Accident Claims Tribunal, Udgir, Dist. Latur in M.A.C.P. No.01/2019. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1 instituted M.A.C.P. No.01/2019 contending that on 21.09.2017 while he was proceeding in his car, the insured Jeep bearing Registration No.MH-25-T-1838 gave forceful dash to his vehicle. Due to impact of accident, he suffered multiple injuries. Consequently, he became permanently disabled

to the extent of 10%. According to the claimant, he was running hotel and also cultivating his agriculture land, but due to permanent disablement, he lost his earning capacity.

3. The claim was contested by the appellant/insurance company on various counts. However, Tribunal after evaluation of pleadings and evidence, allowed the claim petition and passed award for Rs.5,00,687/- alongwith interest @ 9% per annum in favour of claimant.

4. Mr. Choudhari, learned Advocate appearing for the appellant submits that award is excessive and exorbitant. Only on the basis of Income Tax Returns for the year 2016-17, the Tribunal assessed income of the claimant @ Rs.3,22,267/- per annum and granted excessive compensation. He would further submit that claimant contributed in the cause of accident. According to him, there is no loss of earning to the claimant pursuance to accidental injury.

5. Per contra, Mrs. Chate, learned Advocate appearing for the respondents/claimants supports the award.

6. Having considered submissions advanced, apparently there is no dispute that claimant suffered injuries due to accident involving insured vehicle. The claimant recorded his own evidence before the Tribunal and deposed about the manner of accident and negligence of the driver of the insured vehicle. In addition, he relid upon

police papers, particularly copy of charge-sheet filed against driver of offending vehicle. The Tribunal upon evaluation of the evidence, arrived at conclusion that respondent no.1 was responsible for accident. Pertinently, respondent no.1 did not step into the witness box or respondent have not laid any evidence to discredit testimony of claimant. In that view of the matter, Tribunal has rightly discarded contentions of the respondents as regards to the contributory negligence of the claimant.

7. The second contention raised by Mr. Choudhary is that Tribunal has excessively assessed the income of the claimant relying upon Income Tax Returns at Exhibit-48. It appears that, claimant has consistently filed Income Tax Returns from 2013-14 onwards till 2016-17. The last Income Tax Return of the claimant is taken into account, wherein his income is assessed to Rs.3,22,267/- from business of the Vishwajeet Hotel. Generally there is no reason to discard income depicted in Income Tax Returns. The Tribunal cannot be faulted for assessing income based on last Income Tax Returns. In that view of the matter, there is no merit in second contention of the appellant.

8. Mr. Choudhary lastly submits that there is no loss of earning to the claimant consequent to permanent disablement suffered by him. The claimant has pleaded about his hotel business and cultivation of agriculture land. It is true that he could not place on

record documentary evidence to prove his engagement in agriculture, but fact remains that he has hotel business, which is source of earning. The medical record shows that claimant had suffered injuries on chest and abdomen. The claimant and respondent no.2/insurer filed joint pursis at Exhibit-69 to assess the disability as 7%, although it is certified as 10% by medical practitioner. In view of aforesaid joint pursis, now insurer cannot dispute assessment of the compensation based on 7% permanent disablement. No fault can be found in the observations of the Tribunal as regards to the permanent disablement and loss of earning capacity commensurate to the percentage of permanent disablement. In the result, Appeal sans merit.

9. Consequently, First Appeal stands dismissed.

10. In view of dismissal of Appeal, pending Civil Applications stand disposed of.

11. The compensation amount deposited by appellant/insurer be disbursed to the claimant alongwith accrued interest thereon.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025