

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 103 OF 2024

Reliance General Insurance Company Limited]
 4th Floor, Chintamani Avenue Next To Virwani]
 Industrial Estate Opp. Western Express]
 Highway Goregaon (E), Mumbai – 400063.]
 Appellant

Versus

1. Abishek Uday Kambli]
 Aged About : 22 Years.]
 Through His Next Friend]
 Miss Pooja Uday Kambli]
 Residing At, Narayan Patel, Baug,]
 Shivaji Nagar, Shahaji Raje]
 Marg Vile Parle, Mumbai – 400057.]

2. Sunanda Tukaram Kadam]
 46, Navnath Co-Op. Hsg. Society.]
 Plot No.187, RSC-23.]
 Charkop, Kandivali (W)]
 Mumbai-400087]

.... Respondents
 (Respondent
 No.1 is Org.
 Applicant &
 Respondent
 No.2 is Orig.
 Opponent.)

Ms. Shalini Shankar, for the Appellant.
 Mr. Tejpal S. Ingale a/w Ms. Priyanka Babar, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY, 2025.

ORAL JUDGMENT. :

1. The issue involved in this appeal is compensation is awarded on higher side and there was breach of terms and conditions of insurance policy.

2. It is contention of learned counsel for the Appellant/Insurance Company that number of passengers travelling in the offending jeep were exceeding its capacity. The driver of the offending jeep was driving it in excessive speed and in a rash and negligent manner. The driver lost control of the jeep and gave the dash to the road side tree. There was negligence of the driver in the said accident. It was breach of terms and conditions of insurance policy, but this fact is not considered by the Tribunal. Learned counsel further submitted that Tribunal has awarded compensation to the Claimant on higher side. Though, his disability was not produced before the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel Respondent No.1/Claimant that due to accidental injuries, the Claimant has

suffered 72% permanent physical disability, and he has become paraplegic. He is unable to do any work on his own. To prove the disability, the Claimant has examined doctor. The Claimant has suffered 100% permanent physical disability, the Tribunal has passed well reasoned order, and no interference is required in it, and requested to dismiss the appeal.

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

5. Though, the Appellant/Insurance Company has taken the defense that the offending jeep was over loaded with number of passengers and there was breach of terms and conditions of insurance policy, but no evidence is produced on record before the Tribunal to prove it. Hence, I do not find merit in the contention that offending vehicle was over loaded with number of passengers and there was breach of terms and conditions of insurance policy.

6. To prove his income, the Claimant has examined himself, he has stated that, he was working as Accountant Assistant in M/s. Orbit Televisions Network, and he was getting Rs.15,000/- per month. He further deposed that due to accidental injuries, he has

become paraplegic and his disability is 100%. He is unable to do his daily work. Nothing elicited in the cross examination this witness.

6.1. To prove the income of the Claimant, the Claimant has examined PW2-Mangesh More, who deposed that he is working in Orbit Television Network since last 15 years as an Administrator. The Claimant was working in their company as an Account Assistant and they used to pay him salary of Rs.15,000/- per month. The salary certificate is at Exhibit-30.

7. In cross-examination, he admitted that he has no documentary evidence except the certificate to show that the Applicant was working with them, and they not maintain muster-roll for accounting purpose.

7.1. To prove the disability, the Claimant has examined PW3- Dr. Naresh Khanna. He has stated that from medical papers, it revealed that Claimant was having D12, L1 fracture of spine, Paraplegia and fracture of right pott's. Fixation of spine was done at LTMG Hospital. On examination, he found tenderness with deformity with scarring of dorso lumber spine and right ankle, movements of dorso lumber spine and right ankle were painful and restricted. The Claimant was unable to squat, climb stairs, stand or walk for long

without assistance and support of wheelchair. The Claimant was unable to do day to day activities. On the day of examination, fracture of right pott's and fracture D12, L1 were not consolidated clinically and radiologically. The Claimant will require physiotherapy and belt support. On examination, he found that the Claimant was 72% disabled. Accordingly, he issued disability certificate, it is at Exhibit-33. He further deposed that lower body of the Claimant was totally paralyzed. The Claimant is having problem with bladder and bowel. The Claimant is required catheter and surgical diaper. The Claimant will require physiotherapy for rest of his life and he will not be able to do any work. He opined that Claimant has suffered 100% occupational disability.

7.2. In cross-examination, he admitted that he had not treated the Claimant. His both legs are having less sensation and no power. He denied that there is no disability in upper limb of the Claimant. He denied that Claimant can do sitting work. While dealing with the issue of disability of the Claimant, the Tribunal has observed that from the medical papers of LTMG Hospital, though they were not exhibited, however looking to the fact that these are papers from government hospital, they can be certainly relied upon. From these

papers, it can be seen that the Claimant was operated for fixation of spine and situation of Claimant is paraplegic. The evidence of PW-3, supports the medical papers from LTMG Hospital which is a government hospital. Considering the paraplegic condition of the Claimant, the Tribunal has awarded the compensation. I do not find infirmity in it. In my view, the Claimant has suffered 72% permanent physical disability and 100% occupational disability. The medical papers produced on record shows that there was fracture to spine of the Claimant. The PW-3, who is medical expert has deposed that the Claimant may not recover from his disability, and it will remain with the Claimant for life long.

8. Considering these facts, compensation awarded by the Tribunal is proper, and I pass following order:-

ORDER

- i. Appeal is dismissed.
- ii. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the Tribunal

along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

iv. Record and Proceedings sent back to the Tribunal.

9. All pending applications, if any, stand also disposed of.

(SHIVKUMAR DIGE, J.)