Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1848 OF 2025

Bhushan Suresh Sonar …Appellant
Versus
Reliance Industries Ltd & Ors …Respondents

WITH
FIRST APPEAL NO. 2287 OF 2025

HDFC Ergo GIC …Appellant
Versus
Bhushan Suresh Sonar & Anr …Respondents

Ms Shradha K Nakadi, with Rupesh K Bobade, for the Appellant in FA/1848/2025 and for Respondent No. 1 in FA/2287/2025.
Mr Sarthak Diwan, for the Respondent in FA/1848/2025 and for the Appellant in FA/2287/2025.

CORAM: R. M. JOSHI, J.

DATED: 13TH JANUARY 2026

PC:-

1. By consent of both sides heard finally at the stage of Admission.

2. Both Appeals arise out of the same Judgement and Order and involve same question of law and facts. By consent of both sides, heard and decided together.

3. Insurer has filed Appeal taking exception to the Judgment and Order dated 17th May 2022 passed in MACP No. 600 of 2016 essentially on the ground that the Insurer is not liable to pay the compensation in view of the fact that the Insurer by leading evidence has substantiated before the Tribunal that at the relevant time, the driver driving the offending vehicle was not holding valid and effective driving license.

4. As far as Claimant is concerned, he seeks enhancement of the compensation on the ground that the Tribunal has failed to take into consideration the nature of injury caused to the Claimant and the disability assessed by the Doctor. The enhancement is also sought on the ground that the Tribunal has failed to consider the future loss of income, so also, future prospects.

5. Learned counsel for the Insurer submits that the Insurer has raised defence of fake driving license, so also, in paragraph 5 of the Written Statement, it is specifically claimed that the driver was not holding valid and effective license. According to him, after taking such specific plea, the Insurer has led evidence before the Tribunal to show that the driver of the offending vehicle was not holding valid and effective license to drive the heavy goods vehicle. It is his submission that Tribunal ought to have considered the said evidence on record and discharge the liability of the Insure. On these amongst other contentions exception is taken the impugned Judgment and Award.

6. Learned counsel for the Claimant opposed the said contention by pointing out the Written Statement, so also, the findings recorded by the Tribunal on the issue.

7. Needless to emphasise that any amount of evidence led by a party sans pleading needs to be kept out of consideration. Though it is sought to be argued now that there is a specific plea raised by the Insurer in the Written Statement with regard to driver not holding valid and effecive driving license, a conjoint reading of paragraph 4 and 5 indicates that the said statement is not with regard to the valid and effective driving license held by driver but it is to support the claim of the Insurer with regard to the fake license. Thus, in absence of any specific plea being raised by the Insurer, the evidence led before the Tribunal requires discardance and it been rightly done so by the Tribunal. In these circumstances, no fault can be found with the findings of the Tribunal on the said issue.

8. In so far as the enhancement sought by the Claimant, it is the contention of the learned counsel for the Claimant that the Tribunal has failed to consider the evidence led by the Claimant with regard to the injuries and the permanent disability caused arising out of the said injuries. It is further argued that the Claimant has led evidence of the employer which indicates that in case the Claimant had not sustained disability, he would have got promotion as a Manager and since the same has not been achieved by him, there is loss of income, so also, his future prospects are adversely affected. In this regard, references are made to the evidence of claimant as well as the employer. It is further argued that the Tribunal has erred in deducting a sum of Rs. 3,67,270/-which was received by the Claimant under the Mediclaim Policy. It is her submission that any such amount received by the claimant cannot be deducted from the payment of compensation. To support all these submissions, she placed reliance on the following Judgments:

(a) ***Vasant Bugde vs Vasant Raghunath Joshi;***[1]

(b) ***Mohd Sabeer alias Shabir Hussain vs Regional Manger, UP State Road Transport Corporation.***[2]

9. Learned counsel for the Insurer opposed the plea of enhancement on the ground that the Tribunal has taken into consideration the admissions of the claimant with regard to he having received at least two promotions after the occurrence of the accident and his salary is also increased considerably. It is a submission that having regard to all these facts, the Tribunal has rightly refused the compensation for future loss of income and future prospects. He drew

1 2015 2 ACC 219: 2015: 2 BomCR 326.

2 2023 ACJ 1: 20231 Supreme 564.

attention of the Court to the amount of compensation granted by the Tribunal, according to him, is just and fair compensation in the facts of the case.

10. No doubt, in case the claimant is in the position to establish that there is a loss of income or on account of the permanent disability, and the future income is likely to be affected, he is entitled to be compensated for the same. The perusal of the evidence on record, more particularly, the admission of the claimant in his cross-examination that his salary is increased after the occurrence of the accident, so also, he is granted two promotions and at the time of deposition before the Tribunal, he was holding the post of Assistant Manager. No doubt the employer claims that the Claiming could have got the promotion as a manager, however, in the cross-examination, candid admission is given to the effect that except for the bare statement of this witness, there is no other material to support the said contention. As far as grant of promotion, there are number of factors on the basis of which decision of grant or refusal thereof is dependant. In absence of specific evidence, that owing to disability of Claimant, promotion has been refused, it cannot be held so.

11. Having regard to the nature of injuries caused to the claimant, and the other evidence which shows that there is no adverse effect on his income or even future prospects, the Tribunal was fully justified in not compensating him for the same.

12. The Tribunal, however, ought not to have directed deduction of a sum of Rs. 3,67,270/- towards the reimbursement received by him under the Mediclaim Policy. Now it is the settled position of law that the entitlement of the compensation is not dependent upon the reimbursement made under any other policy/ Mediclaim Policy, which is obtained by paying premium.

13. In view of the above discussion, Appeal filed by the Insurer is dismissed. Appeal filed by the Claimant is partly allowed. It is held that over and above the compensation granted by the Tribunal, Claimant is entitled to receive a sum of Rs. 3,67,270/- along with the interest at rate of 8% per annum from the rate of filing of the application till realisation. Rest of the Judgment and Award passed by Tribunal to remain unchanged.

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

ORDER

(a) The Appeal is dismissed.

(b) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(c) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(d) R & P be sent back to the Tribunal.

15. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)