

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1783 OF 2024

United India Insurance Co. Ltd.	...Appellant
<i>Versus</i>	
Mr. Narendra Balwan	...Respondent

Ms. Varsha Chavan, for the Appellant.
Mr. Devendranath D. Joshi, for the Respondent.

CORAM: R. M. JOSHI, J.

DATED: 14th JANUARY, 2026.

PC:-

1. By consent of both the sides, heard finally at the stage of admission.
2. This appeal filed under Section 173 of the Motor Vehicles Act, 1988 takes exception to the judgment and award dated 9th November, 2023 passed in M.A.C.P No.1667 of 2018, whereby the injury claim filed by the claimant came to be allowed by directing the opponent Nos.1 and 2 in the original proceeding to jointly and severally pay a sum of Rs.70,36,704/- with interest at the rate of 7% per annum from the date of application till the realization of the amount.
3. The Appellant/Insurer filed this Appeal on the grounds that the Trial Court has failed to take into consideration the evidence

on record on the point of the negligence of the driver of the offending truck in occurrence of the accident. The impugned judgment and award is also sought to be challenged on the ground that the Tribunal has erred in considering the disability of the claimant and granted excessive compensation. Specific objection is raised with regard to the grant of compensation for physiotherapy and wheel chair by contending that the said amounts are duly covered in the expenses incurred by the claimant at Indian Spine Centre, Delhi. The Appellant has a grievance with regard to the interest granted on future loss of income so also future medical expenses and attendance charges. It is contended that since the said entitlement is for the future, Insurer cannot be saddled with the interest on the said amount.

4. Learned counsel for the Appellant drew attention of the Court to the evidence on record. Which according to her indicates that the Tribunal has erred in holding driver of the offending vehicle negligent in occurrence of the accident. It is her further contention that the Tribunal ought not to have accepted the income of the injured to the extent of Rs.12,500/- per month for the reason that there was no evidence led indicating his occupation and income before the Tribunal. She further drew attention of the Court to the evidence and admissions of the claimant to the effect that he incurred total expenses to the tune of Rs.2,44,476/- during the treatment at Spine Centre, Delhi and since as per the evidence of witness from the said Centre admitted inclusion of physiotherapy, wheel chair, etc. in the bill issued to the claimant. She further submitted that the Tribunal has granted excessive compensation on future loss of income so also the attendance

charges and future medical expenses without there being evidence to support the said claim. On these submissions she seeks setting aside of the impugned judgment and award.

5. Learned counsel for the claimant supported the impugned judgment and award by contending that the claimant has succeeded in proving the negligence of the driver of the truck in occurrence of the accident on the basis of police papers filed on record. He further argued that it is not excessive amount considered as income of the claimant in view of the fact that he was working as a cleaner on the truck. He further argued that the claim granted by the Tribunal is supported by the evidence led by the claimant. He however seeks enhancement of compensation in respect of attendance charges by contending that the Tribunal ought to have taken into consideration the life expectancy of an average Indian while granting said compensation. It is his submission that having regard to the fact that the claimant is paraplegic, he would need attendance for his rest of life. It is submitted that in such circumstances having regard to the age of the claimant at the time of occurrence of accident he would be entitled to get said compensation till he attains average age i.e. 70 years. This contention is opposed by the learned counsel for the Appellant submitting that though the average age of Indian is 70 years, however, the same cannot be accepted in case of a paraplegic patient. It is her submission that owing to the said health condition of claimant, there cannot be any certainty with regard to the life expectancy of such patient. She argued that the formula of application of multiplier is well settled and there is no reason to cause deviation therefrom.

6. The claimant is required to prove his claim on preponderance of probability. It is permissible for the claimant to substantiate his contention by relying upon the police papers to prove involvement and negligence of the driver of the offending vehicle. The claimant was travelling in the offending truck bearing No.HR-47-B-8658 as a cleaner. He, therefore, has witnessed the manner in which the accident occurred. He specifically states about the vehicle being driven in rash and negligent manner by its driver. The said evidence on oath of the claimant gets duly supported by the police papers on record. This Court, therefore, finds no substance in challenge to the findings recorded by the Tribunal with regard to the involvement of the offending vehicle and negligence of the driver in occurrence of the accident.

7. The claimant has narrated in detail the injuries caused to him in the said accident. Said claim of the claimant is duly supported by the medical papers on record. Apart from this, he examined Dr. Lintapane (Exh.-30) indicating that claimant owing to the injuries caused to him has become paraplegic. This evidence gets further corroboration by taking Dr. Sheoran (Exh.-49). This witness claims that he was member and chairman of disability board which examined the claimant for assessment of his disability. The medical board assessed 100% permanent disability on account of operated case of fracture D-9 and D-10 with implant in situ with paraplegia with bladder bowel involvement. Disability certificate (Exh.-20) is duly proved by him. The opponents were unable to bring anything on record by way of cross-examination of these witnesses to discard their opinion. Having regard to the nature of

injuries caused to the claimant, the said opinion of the expert deserves acceptance.

8. Needless to say that in such condition of health of the claimant, he would completely be dependent on others during his rest of the life. Moreover, owing to disability he would be requiring future medical expenses so also attendance charges. Similarly due to 100% functional disability the claimant has lost complete earning capacity.

9. The learned Tribunal has accepted the income of the claimant at the rate of Rs.12,500/- per month and having regard to the fact that he was working as a cleaner, the said amount of income is not excessive. The Tribunal has also applied correct multiplier and multiplicand while determining the compensation for loss of income and future loss of income.

10. With regard to the submissions of learned counsel for the claimant that the Tribunal ought to have considered actual remaining number of years of life for the purpose of granting compensation for attendance charges, even though it is accepted that the claimant will be required attendance for his entire life, the question arises as to what would be the manner of assessment of said compensation. As rightly pointed by the learned counsel for the Appellant that since long, calculation of compensation is standardized, which takes into account the multiplier and multiplicand. The same applies to injury cases also. The learned Tribunal has rightly calculated the compensation of loss of income by adopting the said method of multiplier. Thus, there remains no reason or justification not to apply the same for the purpose of

attendant charges. The said method has been accepted by taking into consideration the life expectancy so also to ensure that there is no arbitrary or excessive award passed.

11. Consequently, no case is made out by the claimant for enhancement of compensation.

12. In view of the above discussions, there is no merit in the Appeal, hence, following order.

ORDER

- (i) Appeal stands dismissed.
- (iii) The statutory deposit along with interest, if any, be transferred to the Tribunal. The said amount be adjusted towards the compensation.
- (iv) All pending applications, if any, stands disposed of.
- (v) R & P be sent back to the Tribunal.

(R. M. JOSHI, J.)