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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2449 OF 2019

WITH

CIVIL APPLICATION NO.5667 OF 2019 IN FA/2449/2019

Bajaj Allianz General Insurance
Company Limited
Through its Authorized Signatory /
Branch Manager,
ABC Complex, MIDC Chikalthana,
Near Prozone Mall, Aurangabad
Tq. & Dist. Aurangabad – 431 001.

... Appellant
(Orig. Respondent No.2)

Versus

1. Gangadhar Bhimrao Giri,
Age: 58 years, Occu.: Nil,
R/o. Chaudhary Colony,
Near Hanuman Mandir,
Chikalthana, Aurangabad.
2. Kachru Hirachandra Bhagure,
Age: 35 years, Occu.: Driver-cum-owner,
R/o. NR Water Tank, Naregaon,
Aurangabad.
3. Nandkishor Narayan Shimhi,
Age: Major, Occu.: Private owner of
rickshaw No.MH-20-BT-5781
R/o. N-9, R-261, M-3/4,
Raigad Nagar, Hudco,
Aurangabad.
4. Ramnath Pandharinath Tangde,
Age: 51 years, Occu: Business,
R/o. Rajendra Nagar, Naregaon,
Aurangabad.
5. Sunil Keshav Gaikwad,
Age: 47 years, Occu.: Driver,
R/o. Galli No.13 Vitthalnagar,
Naregaon, Aurangabad.

... Respondents
(R. No.1- Orig. Claimant,
R.No.2 Orig. Respd. No.1,
R. Nos.3 to 5 – Original
respondents)

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Mr. Mohit R. Deshmukh, Advocate for Appellant
Mr. R.B. Dhakane, Advocate for Respondent No.1
Ms. Pooja H. Tayde, Advocate for Respondent No.4

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CORAM : ABHAY S. WAGHWASE, J.**RESERVED ON : 23 JUNE 2025****PRONOUNCED ON : 10 JULY 2025****JUDGMENT :-**

1. Present first appeal is an offshoot of the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad in M.A.C.P No.491 of 2013.

2. The original claimant (present respondent no.1), namely Gangadhar Bhimrao Giri had filed claim petition against the respondents before the Motor Accident Claims Tribunal at Aurangabad on account of injuries suffered by him in a road traffic accident dated 11.09.2022, seeking compensation to the tune of Rs.5,00,000/- by invoking section 166 of the Motor Vehicles Act. He set up an accident claim on the premise that, he was traveling in auto rickshaw bearing No. MH-20-F-4412 and was proceeding towards Naregaon. At that time, another auto rickshaw bearing No. Mh-20-BT-5781 came from the opposite direction in wrong side and gave dash to the rickshaw occupied by the claimant causing an accident and fracture injuries to the

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claimant. He was required to get treatment for the fractures to his ribs. Because of the accidental injuries, he lost his job as a porter and also expended for treatment and given his as 52 years, he set up a claim of Rs.5,00,000/-.

3. Above claim was resisted by respondents including the present appellant/insurance company. Insurance company (original respondent no.2) contested and resisted the claim on the grounds that, though the offending rickshaw was insured with it, however, the driver of the said rickshaw was not holding a valid driving licence. Secondly, stand was taken by the insurance company that, there was contributory negligence of drivers of both auto rickshaws, and therefore, there should be composite and joint liability.

4. The Tribunal, after appreciating the evidence of PW-1 Claimant and PW-4 doctor, reached to a finding that respondents no.2 and 3 i.e. insurance company and owner of the offending rickshaw to jointly and severally pay the compensation of Rs.7,84,600/- along with interest @ 7% p.a. out of total compensation of Rs.9,80,600/-.

The above judgment is now assailed herein by the insurance company by filing the instant appeal.

5. Heard both the sides.

6. Learned counsel for the insurance company pointed out that, only one of the two auto rickshaws was insured with that insurer. According to the learned counsel, there was concrete evidence suggesting involvement of both vehicles to be indulging in rash and negligent driving. Secondly, percentage of disability applied by the Tribunal had no basis and it is exorbitant, even when it was at the most to the 18%. He pointed out that, claimant was *Mathadi Kamgar*.

7. Inviting attention of this Court to paragraphs no.14 and 15 of the impugned judgment, he would submit that, there is no evidence suggesting permanent loss of income or work. He pointed out that, when there was contributory negligence, the Tribunal ought to have saddled equal contribution to both vehicles. However, he concedes that under the head of future prospects, claimant is entitled to get at the most 18%, which was asserted and claimed by him. He also submitted that, while assigning loss of earning capacity, decision of the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajay Kumar & others* 2011(1) SCC 343, ought to have been adopted. That, there was no evidence to award 80% functional disability as is observed by

the Tribunal, more particularly, in absence of any evidence indicating inability to render work in future. Thus, he questions the findings of the Tribunal to the extent of holding 80% functional disability.

8. He also pointed out that evidence of doctor does not suggest any permanent loss of earnings in view of the nature of injuries suffered by claimant. He also questions the finding of Tribunal on the point of negligence and it is his case that, when there was collision between two vehicles, who were approaching each other from opposite direction, there ought to have been equal contribution rather than carving out percentage of negligence. Thus, in substance, it is his case that contribution saddled on both rickshaw drivers ought to have been equal. In support of his submissions, he has placed reliance on *T.J. Parameshwarappa v. Branch Manager, New India Assurance Company Ltd and others* (2022) 17 SCC 51; *Sanjay Kumar v. Ashok Kumar and another* (2014) 5 SCC 330; *Prakash Velip v. Servito Fausto and others* 2023 SCC OnLine Bom 466 and *Sayed Mohaseen Sayed Jalal v. Maharashtra State Road Transport Corporation, Aurangabad and another* (2023) 5 Mah LJ 481.

9. In answer to above, apart from keeping written notes of arguments on record and relying on several rulings viz. *Pappu Deo Yadav v. Naresh Kumar and Ors.* AIR 2020 SC 4424; *Lalan D alias Lal and Anr. v/ Oriental Insurance Company. Ltd.* AIR 202 SC 4508; *Erudaya Priya v. State Express Transport Corporation Ltd.* Air 2020 SC 4284; *K.S. Murlidhar v. R. Subbulakshmi and Another* AIR 2025 SC 70; *Kajal V Jagdish Chand and Others* (2020) 4 SCC 413; *Reliance General Insurance Co. v. Manju wd/o Vikram Choudhary & Ors.* 2021 (6) ALL MR 171; *Notification by central government under payment of wages act, 1936, came into force from 11.09.2012 ; Mahalakshmi v. krishnaraj* 2024 ACJ 2244; Syed *Sadiq ETC. V Divisional Manager, United India Ins. co.* AIR 2014 SC 1052 and *Chandramma v. Manager, Regional Office, NCC Limited and Another* (2023) 2 SCC 144, learned counsel for respondent no.1/claimant submits that, though claimant has not set up cross objection, in view of judgment of this Court in *Reliance General Insurance co. v. Manju wd/o Vikram Choudhary* (supra), even in absence of cross objection or cross appeal, claimant is entitled for just compensation. He pointed out that, in fact in suitable cases, the claimant is also entitled for enhanced compensation. As regards to negligence, disability and

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loss of income is concerned, learned counsel supports the findings of the Tribunal.

10. Before advertng the merits of the case, it would be fruitful to refer to the evidence of PW4 Dr. Bedmutha, who issued disability certificate. He deposed at Exhibit 74 as under:

“I am M.S. Ortho. I am having Sahyadri Multi Specialty Hospital, Mukundwadi, Aurangabad.

2. The patient Gangadhar Bhimrao Giri was brought to my hospital for evaluation of assessment on 08.10.2015. On that day, I examined him clinically and radiologically and found that he had the malunited fractured of 3rd, 4th, 6th rib resulted in the vehicular accident dated 11.09.2012 as per history disclosed by him. He had taken treatment in Ghati Hospital, Aurangabad. So according to McBride scale I assessed the percentage of his permanent disability. It was 18%. I issued the disability certificate, which is now shown to me. Contents of the same are correct. It bears my signature. It is at Exh.75.

3] Because of the above kind of disability and its percentage the petitioner can not do any hard work for his whole life.

Cross-examination: For respondent no.1 Sk. Anil Adv.

Absent. No W.S. Hence, no cross.

Cross-examination: For respondent no.2 Mr. S. A. Adhav, Adv.

5] Since last 9 years I am doing private practice. I did not give treatment to said patient. I had checked the entire medical papers including discharge card of the petitioner. In my opinion there was malunion of fracture of 3rd to 6th ribs of the petitioner because of fracture and its treatment. The said malunion fractures of at the said ribs shall remain for whole life

in the body of the he petitioner. I have x-rays which I had taken at the time of his examination regarding said malunion. Even if the CT scan is got done of the said ribs today then also said malunion position will be disclosed at said ribs. The petitioner undergone the surgical treatment in Ghati Hospital. I never did it. In said surgical treatment no rib of the petitioner was removed. But intracostal tube are inserted in his ribs at Ghati Hospital at the time of surgery.

6] It is not true to say that I have assessed the percentage of disability to higher side. It is not true to say that the petitioner has no permanent disability as no rib was removed in surgical treatment. It is not true to say that to support the petitioner I deposed falsely in his favour and issued false certificate”.

11. Here, as submitted by learned counsel for the insurance company, and it is also indisputably appearing that, the doctor who treated the injured and derived percentage of disability, has reached to a finding that injured had suffered 18% permanent disability, but this Court cannot lose sight of the fact that injured, who was *Mahtadi* worker was primarily involved in lifting loads, carrying it from one place to another and that was his primary source of earnings. The impact of accident was indisputably fracture to 3rd, 4th, 5th and 6th ribs. Though, fractured ribs were on the front part, considering the nature of claimant's work, even if any load is taken on the back, it directly or indirectly impacts the very capacity of a person to carry the load, more particularly, who is in advancing age over 50 years. It is common knowledge that, by virtue of advancing age, there is

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degeneration of bones making bones and ribs more fragile, thereby weakening its strength and capacity. Therefore, with this view in mind, though the medical expert has arrived at a conclusion that injured has suffered 18% permanent disability, this Court does not find error on the part of Tribunal in considering it 80% disability.

12. Further, the rickshaw which was primarily involved and responsible for rash and negligent driving was indisputably insured with the present appellant and the finding of the tribunal to that extent cannot be faulted at, because the offending rickshaw insured with the present appellant had gone to the wrong side, and therefore, responsibility of the insurance company and owner of the offender rickshaw is 80% which cannot be said to be misplaced or erroneous.

13. There being no distinct evidence on the part of appellant about non availability of a valid driving licence or specific breach of its condition. Even the submissions made to that extent cannot be allowed to frustrate the entitlement of the claimant/respondent no.1 who was working as *Mathadi Kamgar* i.e. *Hamal*.

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

ORDER

- (I) First Appeal stands dismissed.
- (II) Pending civil application, if any, also stand disposed of.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane