

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.717 OF 2003

Shivling Vithal Barge

...Appellant

V/s.

1. Dilawar Shamshuddin Dangare
 2. New India Assurance Company Ltd., Sangli,
 3. Ramjan Abdul Shaikh
 4. Oriental Insurance Company Ltd., Sangli
- ...Respondents

**WITH
FIRST APPEAL NO.718 OF 2003**

Sou. Vimal Vithal Barge

...Appellant

V/s.

1. Dilawar Shamshuddin Dangare
 2. New India Assurance Company Ltd., Sangli,
Policy No.31/151004/09435
 3. Ramjan Abdul Shaikh
 4. Oriental Insurance Company Ltd., Sangli
- ...Respondents

**WITH
FIRST APPEAL NO.716 OF 2003**

Shri. Vithal Govind Barge

...Appellant

V/s.

1. Dilawar Shamshuddin Dangare
2. New India Assurance Co. Ltd., Sangli,

3. Ramjan Abdul Shaikh

4. Oriental Insurance Company Ltd., Sangli ...Respondent

Mr. Ranjit R. Bhosale, for the Appellant.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 09th May, 2025
PRONOUNCED ON: 12th June, 2025

JUDGMENT:-

. Present Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) by Original Claimants in M.A.C.P. No.352 of 1993, No.354 of 1993 and No.349 of 1993 respectively, against the common Judgment and Order dated 30/11/2000, in Motor Accident Claim Petition No.349 of 1993, No.350 of 1993, No.351 of 1993, No.352 of 1993, No.354 of 1993, No.355 of 1993 and No.363 of 1993, passed by the Motor Accident Claims Tribunal, Sangli.

1.1) By the impugned Judgment and Order, M.A.C.P. No.363 of 1993 was dismissed and all the other claims were partly allowed but only against Respondent No.3.

2) Record indicates that, all the aforesaid Appeals have been admitted on 18/10/2004. In F.A. No.717/2003, Respondent Nos.2

and 4 were duly served. Advocate Rajesh Behere appeared for Respondent No.2 and Advocate J.S. Chandanani appeared for Respondent No.4. The Appeal has been dismissed for default as against Respondent No.3.

2.1) The record also indicates that F.A. No.717 of 2003 has been dismissed for default against Respondent No.1. But the Bailliff's Report dated 24/04/2006 and the Report dated 26/04/2006 received from the Asstt. Superintendent, Civil Court Junior Division, Islampur state that Respondent No.1 has been served under O 5 R 17 of the C.P.C. by affixing the notice to the outdoor of his house as he had gone out of station and about to return in the next 4/5 days. However, Respondent No.1 did not file his appearance. Therefore, the Order of dismissing the Appeal against Respondent No.1 is called back.

2.2) In First Appeal Nos.718/2003 and 716/2003, Respondent Nos.1, 2 and 4 were duly served. Advocate Mr.D.B. Gupta, Advocate Mr.Rajesh Behere and Advocate J.S. Chandanani appeared for Respondent Nos.1, 2 and 4 respectively. Said Appeals have been dismissed for default against Respondent No.3.

3) Hence, heard Mr.Bhosale, the learned Advocate for the Appellants. Perused the Record. Despite sufficient opportunities granted, none appeared for Respondent Nos.1, 2 and 4.

4) All the said 7 claims arose out of the same accident which

occurred on 13/06/1993, at about 6:00 PM, on Pune-Bangalore Road, near *Yede-Nipani* Approach Road. The vehicles involved in the accident were a Motor Truck bearing No.MWE-1457 (“truck”) and a Tempo Trax bearing Registration No. MH12E8237 (“trax”). The truck was owned by Respondent No.1 and insured with Respondent No.2 whereas the trax was owned by Respondent No.3 and insured with Respondent No.4. The said trax was driven by *Azamuddin Sayyed*. Out of the 7 claims, M.A.C.P. No.351 of 1993 was in respect to the death of *Hemlata*, aged 15 years, who was occupant in the trax. M.A.C.P. No.363 of 1993 was in respect of the death of *Azamuddin Sayyed*.

5) It was the case of the claimants that at the relevant time and place, when they alongwith other injured-claimants and the deceased *Hemlata* were travelling in the trax and proceeding to *Jotiba* for *darshan*, three trucks were coming from the opposite directions in a row. The trax was proceeding from North to South, i.e., from *Koregaon* to Kolhapur side, while the trucks were coming from Kolhapur side, i.e., from South to North. The offending truck was 3rd in the row, which was driven rashly and negligently by Respondent No.1, the owner himself. It was averred that, while overtaking the two trucks ahead of it, the truck came on the wrong side and gave dash to the trax, even though the driver of the trax gave a signal through

headlights. Due to the said impact *Hemlata* and *Azamuddin Sayyed* sustained serious injuries and died on the spot. The Appellants and other claimants sustained grievous injuries which caused them permanent partial disability. Hence, the Appellants, other injured persons and the legal heirs of *Hemlata* and *Azamuddin Sayyed* filed the said claims under Section 166 of the Motor Vehicles Act, 1988.

6) The Appellant/Claimant in M.A.C.P. No.352 of 1993 averred that, he was aged 20 years and studying third year B.A. at the time of accident. He had sustained a fracture to the skull and an injury to the brain. He was inpatient in Krishna Hospital and medically treated there till 23/06/1993. He lost his memory due to the head injury. As a result, he could neither complete his education nor get his dream job in the police or the military services. Therefore, he claimed Rs.1,00,000/- towards loss of memory, Rs.25,000/- towards pain and suffering, and Rs.5,000/- towards medical expenses.

7) The Appellant/Claimant in M.A.C.P. No.354 of 1993 averred that, she was aged 50 years and doing household work. She had sustained a fracture to the skull, right hand, jaw and dislocation of some teeth. She was inpatient till 19/07/1993. The aforesaid injuries caused her permanent disability due to which she cannot do the domestic work as before. Therefore, she claimed Rs.1,50,000/-

towards loss of memory, Rs.25,000/- towards pain and suffering, and Rs.10,000/- towards medical expenses.

8) The Appellant/Claimant in M.A.C.P. No.349 of 1993 averred that, he was aged 46 years, serving as a Police-Sub Inspector and drawing monthly salary of Rs.3,500/-. He had sustained injury over head, face, fracture to the left leg and fracture to the right hand. He was inpatient in the same hospital. His injuries were operated, but, he cannot work as before due to the injuries. Therefore, he claimed Rs.1,00,000/- towards loss of memory, Rs.25,000/- towards pain and suffering, and Rs.5,000/- as medical expenses.

9) All the seven claims proceeded without a Written Statement of Respondent Nos.1 and 3.

9.1) Respondent No.2 opposed the aforesaid claims by filing the separate Written Statement (at Exhs.24 & 23, 25 & 26 respectively). Respondent No.2 denied that, the accident occurred due to the rash and negligent driving of the truck. It was denied that, the Appellants sustained the said injuries and that it caused disability to them, which affected their working and earning capacity. It was contended that, the accident occurred when *Azamuddin Sayyed*, driver of the truck was overtaking another vehicle and in that process came on the wrong side. It was admitted that, the truck was validly and effectively insured with Respondent No.2 at the time of accident.

However, it was contended that the liability of Respondent No.2 was subject to the terms and conditions of the policy.

10) Respondent No.4 also opposed the claims by filing the separate Written Statement (at Exhs.27, 26 & 27 respectively). Respondent No.4 admitted the said accident and that, the trax was validly and effectively insured with Respondent No.4. But it contended that said accident occurred due to the rash and negligent driving of the truck by Respondent No.1. It was contended that there was no negligence on the part of the driver of the trax. Respondent No.4 denied the accidental injuries of the claimants; that, it caused them the disability; and that, the claimants are not able to work and earn as before, due to the disability. It was contended that there was a breach of the policy terms and conditions by the driver and owner of the trax as the trax was carrying 15 to 16 fare paying passengers and their risk was never covered by the subject policy of the insurance. In this background, Respondent No.4 prayed to dismiss the claim with costs.

11) In view of the pleadings, the Tribunal framed the relevant issues in each claim. Thereafter, the parties adduced their evidence in the respective claim. After considering the oral and documentary evidence on record, the Tribunal held that the accident occurred only due to the rash and negligent driving of the trax. As a result, the

Tribunal absolved Respondent Nos.1 and 2 from the liability to pay the compensation. The Tribunal also absolved the Respondent No.4- Oriental Insurance Company from the said liability for the reason that the trax was hired for reward and carrying more passengers than permissible limit.

12) In M.A.C.P. No.352 of 1993, considering the evidence as to the injuries, disability, occupation and income of the claimant Mr. Shivling Barge, the Tribunal held that, the doctor did not show any disability nor any witness was examined to prove that the injury suffered by this claimant led to the permanent disability. It was held that the injury certificate (Exh.47) is not sufficient to prove that the fracture to the skull resulted in the permanent loss of the memory. Therefore, the Tribunal held that it is difficult to accept that the claimant became disabled due to said injury. However, considering the nature of the injury, the Tribunal awarded Rs.10,000/- under general heads. Relying upon the payment receipt and the hospital bill (Exh.48), the Tribunal awarded Rs.3,171/- towards medical treatment. Although the claimant proved the medical proscription (Exhs.49 to 57), the Tribunal did not consider the same and awarded any compensation towards purchase of pharmacy, for want of pharmacy bills. Thus, the Tribunal awarded total Rs.13,171/- to this claimant.

13) In M.A.C.P. No.353 of 1993, considering the evidence as to the injuries, disability and the occupation of the claimant Sau. Vimal Barge, the Tribunal held that, the disability suffered by her permanently reduced her working capacity as a homemaker and considering the fact that, cooks were then available on a monthly payment of Rs.300/-, the Tribunal held that there was loss of Rs.3,600/- per annum towards engaging a cook/maid on account of the disability. The claimant was aged 50 years at the time of the accident. Therefore, the Tribunal awarded her a total compensation of Rs.36,000/- for the loss of 10 years' income towards engaging a maid. Additionally, the Tribunal awarded Rs.13,014/- towards medical expenses and Rs.15,000/- for pain and suffering.

14) In M.A.C.P. No.349 of 1993, considering the evidence of the claimant Mr. Vithal Barge, the Tribunal held that, there has been no such disability to the claimant which can be said to be permanent in nature. Therefore, awarded him total compensation of Rs.14,842/-.

Submissions

15) Mr. Bhosale, the learned Advocate for the Appellants submitted that the Appellants adduced their evidence on oath and clearly stated that the accident occurred due to the rash and negligent driving of the truck. It is a settled law that in such claim matters the substantive evidence should be weighed more than the police papers.

He submitted that the F.I.R. clearly recorded that, the accident occurred due to rash and negligent driving of the truck. Neither Respondent Nos.1 filed his Written Statement nor adduced his evidence to contest the issue of the negligence. He submitted that the F.I.R. and the Spot Panchnama do not show exactly how the vehicles were positioned when they met with the accident and exactly on which side of the road did the accident occur. Therefore, there was no legal impediment in relying on the evidence of the Appellants and accepting their claim that the accident occurred due to the rash and negligent driving of the truck. Respondent Nos.2 to 4 also not examined any witness including Respondent No.1, to contradict the evidence of the Appellant as to the manner and cause of the accident. Therefore, adverse inference was permissible against them. However, the Tribunal held that the accident occurred due to rash and negligent driving of the truck only, which is erroneous and against the evidence on record. He submitted that despite the claimants suffered serious injuries and consequent disability, meager compensation amount have been awarded to them. He, therefore, urged that the impugned Judgment and Award be modified and just compensation be awarded.

16) Now turning to the question of negligent driving. All the claimants specifically pleaded that there was rash and negligent driving of the truck by Respondent No.1. It is their case that when the

trax reached near *Yede-Nipani* approach road, the offending truck, while overtaking two trucks which were ahead of it, came on the wrong side and gave dash to the trax which was driven by *Azamuddin Sayyed* in a moderate speed, observing the rules and regulations of the road and without any negligence on his part.

17) The evidence of claimant Vithal Govind Barge is that, at the time of the accident, he was seated in the trax on the front seat, near the driver. He saw that the offending truck ignored the signal given by the trax driver, came at a high speed, in a negligent manner and gave dash to the trax. But he admitted that at the spot, the road was straight for about 3 to 4 kms. He saw the offending truck approaching from the front, when it was at a distance of about ½ km. from the trax. Therefore, the Tribunal observed that, if really the offending truck was seen from a distance of ½ km., then certainly the trax driver would have taken precaution and took the vehicle on *Kachha* road. As such, the Tribunal held that the evidence of Vithal Barge is not reliable. The Tribunal observed that, when the truck driver was overtaking the trucks ahead of it, there was no possibility of the accident. This shows that the trax driver was not attentive, if the evidence of Vithal Barge was believed as correct.

17.1) The Tribunal noted that, 15 to 16 persons were seated in the tempo trax. The claimant in M.A.C.P. No.350 of 1993 was seated

at the rear portion of the trax, therefore, it was hardly possible for her to see the incoming vehicle. Appellant Shivling Vithal Barge admitted that at the relevant time, he was sleeping and he woke up only after the accident. From the Evidence of the claimant Rohini in M.A.C.P. 353 of 1993 and the Appellant Vimal, the Tribunal noted that, they admitted that the occupants in the jeep were engrossed in conversation with each other. They were not attentive to the road. Therefore, the Tribunal held that it is difficult accept their evidence that the accident occurred due to the rash and negligent driving of the truck.

17.2) The Tribunal noted that, from the F.I.R. it is evident that that API Kobal registered the offence against Respondent No.1 for causing this accident and prosecuted him. However, considering the contents in the Spot Panchnama, the Tribunal held that the width of the road at the spot was 22 feet. There was *kachha* road of 5 to 6 feet in width abutting either side of the road. Kolhapur is towards South, while Pune is towards North. Admittedly the truck was proceeding towards Pune, while the trax was proceeding towards South, i.e. towards Kolhapur. It means the correct side of the trax was East, while the correct side of the truck was West. The Spot Panchnama recorded that, the vehicles involved in the accident were removed from the road for traffic purposes, but before that, the post accident

position of the vehicles was marked by drawing lines.

17.3) The Tribunal noted that, in the Spot Panchnama, in paragraph 2, there is reference that the front wheel of the trax was one feet away from the dividing line of the road towards West and the rear wheel was in the centre of the road. It means that the trax came to the wrong side as the place of accident is one foot away from the dividing line towards West. Therefore, the Tribunal declined to accept the averments or statements made by the witnesses that the offending truck came to wrong side, while over-taking the trucks ahead of it and gave dash to the trax. The Tribunal further observed that, on the contrary, it appears from the situation found at the spot that the trax driver himself, while over-taking some other vehicle, came to the wrong side as his vehicle was found one foot towards Western side, *i.e.*, correct side of the truck. Additionally, the Tribunal noted that, the trax was over-crowded. The capacity of trax was not more than 10 seats. Therefore, an inference can be drawn that the driver of the trax was unable to control the trax. Only precaution of the driver is not sufficient. Therefore, and applying the principle of '*res ipsa loquitur*', the Tribunal held that there was total negligence on part of the trax driver.

18) But this Court is not in agreement with the aforesaid finding recorded by the Tribunal. Because, it is well-settled that in the

proceedings of Section 166 of the Act, the issue of negligence has to be decided on the basis of preponderance of probabilities and that, standard of proof beyond reasonable doubt cannot be made applicable in such cases. In ***National Insurance Co. Ltd. v/s. Chamundeswari and others***¹, the Hon'ble Supreme Court held that,

“... If any evidence before the Tribunal runs contrary to the contents in the first information report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the first information report. ... Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record.”

18.1) In ***Jiju Kuruvila and others v/s. Kunjujamma Mohan and others***², the Hon'ble Supreme Court held that,

“24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and their directions, etc. depends on a number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in

¹ 2021 ACJ 2558

² 2013 ACJ 2141

which the accident occurred, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

18.2) In the case in hand, the Spot Panchnama indicates that, the line marking done on the road was mainly intended to demonstrate as to how the truck and the trax were positioned, post the accident. In other words, said marking was not intended to show that, the accident occurred due to the fault of both drivers or either of them. It is not clear as to when the said marking was done and by whom. The Spot Panchnama was recorded on the next day of the accident. There is no evidence from the Respondents' side as to how the said vehicles were actually positioned when met with the accident. The injured witnesses, in particular, claimant- Vithal Barge categorically deposed that, before the accident, the driver of taxi had signaled the driver of the truck and alerted him. However, the Spot Panchnama clearly indicates that there was a 40 feet long left rear tire mark and a parallel 35 feet long right rear tire mark of the truck on the road, even though the truck was a heavy vehicle. Therefore, it is legitimate to infer that since the truck was driven at a very high speed,

it could not slow down while overtaking despite receiving the signal from the driver of the taxi, and consequently it contacted the trax. The Respondents have not explained as to why the truck was driven touching the centre of the road despite the truck driver had a 16 feet wide road including 5 feet wide *Kachcha* road and two trucks were running ahead of the said truck. It is significant to note that if the trax was driven on the wrong side, first it would have collided with the first truck, not the last truck. Therefore, the evidence of the claimant is acceptable that the speeding offending truck unthinkably and dangerously overtook the trucks running ahead of it and consequently the truck came near the centre of the road. This act of the driver of the said truck was the main cause of the accident. There is no pleading or contention nor the evidence that the accident occurred just because the trax was over-seated. Therefore, The F.I.R. was registered only against the driver of the truck, because the eye witness Mr. Prakash Patil named in the F.I.R. clearly stated that the trax was driven slowly and only blamed the Respondent No.1 for causing the accident.

18.3) It is not the case of the claimants that any vehicle was proceeding in front of the trax at the time of the accident. Sufficient road space was available to the left of the trax. However, the right side of the trax came in the line of the truck. Therefore, it is probable that the trax was also overtaking some vehicle. This inference is fortified

by the fact that, at the time of the accident, one tempo was stationary on the *Kachcha* road to the East side of the said road, *i.e.*, exactly to the side of the spot of the accident. As such, it is probable that, in addition to the *Kachcha* road, said stationary tempo also occupied some portion of the said road. Presumably, therefore, the trax driver had no other option but to overtake the stationary tempo by keeping safe distance. And in that process, the trax came at the center of the road and at that very juncture, the truck came from the opposite direction driven at a high speed despite being loaded with cattle and, dangerously overtaking the two trucks running ahead. Be that as it may, it is evident that despite the trax driver signaled by flashing the headlamps, the driver of the truck did not slow down the truck. Therefore, the conclusion is inevitable that Respondent No.1 was not driving his truck carefully, keeping proper look out at the road and following the traffic rules/regulations. As a result, the truck dashed the trax and caused the accident. Thus, the driver of the truck alone was negligent and responsible for the accident.

19) In M.A.C.P. No.352 of 1993, the evidence of Shivling Barge is that he had sustained a head injury due to the accident. He was inpatient in Krishna Hospital from 13/06/1993 to 23/06/1993. His injury was operated. After one month, again he was admitted in the same hospital as he was suffering from certain medical conditions

directly related to the said injury. He deposed that he has been suffering from loss of memory and giddiness and, during night time he has been experiencing severe head-aches, on account of the said injury. He had an ambition to become a police officer or an officer in the military. He could not fulfill his ambition due to the disfigurement of the face. However, the claimant Shivling Barge was not examined by any doctor, who treated or operated on his injury nor did he prove any document in the evidence to establish the said difficulty. Therefore, the Tribunal held that the claimant failed to prove that the injury suffered by him led to the permanent disability claimed by him. In the backdrop, the Tribunal awarded Rs.3171/- towards medical treatment as per the payment receipt at Exh.48. Further, the Tribunal awarded Rs.10,000/- under the general head.

19.1) But in my considerable opinion, the aforesaid compensation is less, because the Injury Certificate (Exh.47) clearly recorded that, the claimant had suffered “Compound Skull Fracture with Brain Injury and Subarachnoid Bleeding”. He had become unconscious and irritable because of the injury. There was bleeding from the nose and mouth. The classified file “D” of the original proceedings received from the Tribunal contains the entire medical papers of the claimant. Said papers show that, initially, the claimant was inpatient from 13/06/1993 to 23/06/1993. Again, the claimant

was admitted in same hospital on 20/12/1993 for the complaint of “Generalized Tonic Clonic Seizures” and unconsciousness, while he was asleep. This indicates that despite the medical treatment, the head injury impaired the brain. It appears that the aforesaid medical papers were not brought to the notice of the Tribunal. There is nothing to doubt the said papers. Therefore, even if the claimant failed to prove the disability, looking at the evidence as a whole, in my considered view, the claimant is entitled to receive a lump sum compensation of Rs.75,000/- towards medicine, conveyance, special diet, injuries, disability, pain and suffering and loss of the amenities of life.

19.2) The award of Rs.3171/- for the medical expenses is in consonance with the medical bills and receipts etc. proved in the evidence. Besides, the claimant has incurred Rs.1148/- towards hospital, Rs.198/- for accommodation and Rs.1400/- for C.T. Scan, totalling to Rs.2,746/-. The relevant payment receipt and hospital bill are available in the classified file “D”. Therefore, the claimant is entitled to receive additional Rs.2,746/-. Thus, the claimant Shivling Barge is entitled to get a total compensation of Rs.80,917/-.

20) In M.A.C.P. No.354 of 1993, the evidence of the claimant Vimal Barge coupled with the evidence of AW3-Dr. Ravindra Gunaki (Exh.53 in M.A.C.P. No.349 of 1993) show that the said claimant had

suffered the following injuries in the accident :- (a) Head Injury, (b) Splenic tear, (c) Compound comminuted fractures proximal third radius and ulna with elbow dislocation Rt. Side, (d) Fracture mandible Rt, and (e) Fracture 3rd rib Rt. Side. The aforesaid injuries led to (a) Fixed flexion deformity Rt. Elbow 30°, and (b) Limitation of supination Rt. Forearm. AW3 deposed that the said injuries resulted in 35% permanent partial disability. The aforesaid evidence is supported with the Injury-Cum-Disability Certificate (Exh.39). There is nothing on record to disbelieve the said oral and documentary evidence. The other medical papers in the classified File “D” show that there was crush injury to the Rt elbow and it was 3rd degree splenic tear. Hence, the Tribunal accepted the said injuries and the disability, which is not erroneous.

20.1) In view of various bills and prescription produced in the evidence, the Tribunal awarded of Rs.13014/- towards medical treatment, which is justifiable.

20.2) The claimant deposed that her teeth fell due to the mandible injury, therefore, she is unable to eat properly. There is loss of memory due to the head injury. Therefore, she is unable to do the domestic work as before. The disability has reduced her working capacity as a homemaker, forever. There has been the loss of the gratuitous cooking services due to the accidental injuries. Therefore,

there will be loss of the family income on account of engaging a cook. Cooks were then available on a monthly payment of Rs.300/-. Therefore, the Tribunal held that there was loss of the income of Rs.3,600/- per annum towards engaging a maid and considering the claimant was aged 50 years, awarded a sum of Rs.36,000/- for the loss of 10 years' income.

20.3) However, in accordance with the decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi and Others***³ and ***Sarla Verma and others Vs. Delhi Transport Corporation and another***⁴, 25%, (Rs.900/-) of the loss of the income should be added towards the loss of the future income. On such addition, the actual loss of the yearly future income would be Rs.4,500/- per annum. Considering the claimant was aged 50 years, the applicable multiplier would be "13". As such the actual loss of the income comes to Rs.58,500/-. The Tribunal awarded Rs.15,000/- towards pain and suffering, but considering the nature of the injuries and disability caused, the claimant deserves to get Rs.40,000/- for the same. No compensation is awarded for the loss of the enjoyment and amenities of life. Looking at the nature of the disability and the fact that the claimant has been unable to eat properly, she deserves to get Rs.50,000/- towards the

3. 2017 ACJ 2700 (SC)

4. 2009 ACJ 1298 (SC)

loss of the enjoyment and amenities of life. The claimant is entitled to get Rs.5000/- as conveyance and special diet. Thus the total compensation comes to Rs. 1,66,514/-.

21) In M.A.C.P. No.349 of 1993, the evidence of Vithal Barge coupled with the evidence of Aw2-Dr. Bharat Dixit and AW3-Dr. Ravindra Gunaki show that claimant Vithal Barge had sustained the following injuries due to the accident :-

- (a) CLW over scalp, 10 x 1 x 1 cms., active bleeding
- (b) CLW below right eye, 3x ^{1/2} x ^{1/2} cm.,
- (c) CLW left fore-arm, 3 x 1 x ^{1/2} cm.
- (d) Fracture patella, left side.

21.1) AW2 and AW3 deposed that Vithal Barge was admitted in the hospital on 13/06/1993 and discharged on 19/07/1993. AW3 deposed that he examined Vithal Barge on 18/10/1995. Vithal Barge has difficulty in squatting due to the fracture injury. As such, he has suffered 10% permanent partial disability with reference to the Right lower limb. Accordingly, he issued the Disability Certificate (Exh.54). The Evidence of Vithal Barge is that due to the head injury his memory was affected, but there is no sufficient evidence to hold the same. On the contrary he admitted that his mental condition was normal and good. The claimant deposed that, he was not given *bandobast* duty due to the fracture injury. He was placed in the

control room. Therefore, he lost dearness allowance and travel allowance. But in the cross-examination, he admitted that even after the accident he served in the police department and received entire pay, gratuity and all other dues after his retirement. Therefore, the Tribunal find it difficult to accept that further promotions of Vithal Barge were affected due to the disability. The Tribunal observed that even after the said injury, Vithal Barge discharged his duty as a PSI. Therefore, there was no such disability which can be said to be permanent in nature. In the backdrop, the Tribunal awarded him total compensation of Rs.14,842/- as under :-

- (a) Medical Expenses Rs.6842/-.
- (b) Loss of 17 days leave Rs.3000/-.
- (c) Pain and Suffering Rs.5000/-.

21.2) However, the Tribunal did not consider that there was nothing on record to take an exception to the evidence of AW3. Patella is important part of the body. The Respondents did not adduce any evidence to rebut the evidence of Vithal Barge that he suffered the 10% disability or to show that, the said disability has been completely recovered. Considering the disability has been suffered with reference to the lower limb and the percentage is less, it was probable that, the claimant could continue the service despite the disability. But that itself is not sufficient to conclude that the claimant

has not suffered the disability. Therefore, I hold that the claimant has suffered 10% permanent partial disability as deposed by PW3. As a result, even if there is no loss of the future income on account of the disability, the claimant is entitled to receive Rs.30,000/- towards the disability.

21.3) The evidence of AW2 and AW3 indicates that the claimant was inpatient from 13/06/1993 to 19/07/1993. The Discharge Card (Exh.54) also shows that the claimant was discharged on 19/07/1993. As such, being inpatient, the claimant must have taken leave for the hospitalization period of 36 days. Therefore, the claimant is entitled to receive Rs.4,000/- towards the loss of the leave.

21.4) Considering the nature of the head injury and the fracture sustained by the claimant, he must have suffered pain for a considerable duration. The Discharge Certificate mentions that the claimant was treated in the O.P.D. from 20/06/1993 to 18/10/1995. This indicates that the fracture injury took considerable time to recover. However, Rs.5,000/- only awarded towards pain and suffering. Considering the evidence as a whole, in my view the claimant deserves to get Rs.20,000/- towards pain and suffering. There must be some loss of amenities of life on account of the fracture injury and the disability. Therefore, the claimant deserves to get Rs.20,000/- towards the loss of enjoyment of life. The medical

expenses are awarded as proved by the claimant. Therefore, the same need not be enhanced. The claimant is also entitled to receive Rs.5000/- under the head of special diet and conveyance. Thus, the claimant is entitled to receive total Rs.85,842/-.

22) Since the truck was owned by Respondent No.1 and validly insured with Respondent No.2-New India Assurance Company Ltd, said Respondent Nos.1 and 2 are liable to pay the compensation amount worked out above. The Appellants are entitled to receive some interest on the compensation amount. Considering the facts and circumstances of the case, the injuries sustained by the claimant and the amount of the award quantified above, I deem appropriate to award the interest at the rate of 8% per annum, from the date of registration of the claims till realization of the amount.

23) The conspectus of the above discussion is that, the Tribunal failed to consider the evidence produced by the Appellants/Claimants in its correct perspective. Consequently, instead of holding Respondent No.1/truck owner-cum-driver negligent and responsible for the accident, the Tribunal wrongly held that the accident occurred due to the rash and negligent driving of the trax. Consequently the claims were dismissed against Respondent Nos.1, 2 and 4, which is erroneous and not lawful. Despite sufficient evidence was adduced, the Tribunal failed to quantify the “just

compensation". Said infirmity, therefore, warranted an interference with the impugned Judgment and Order to set aside the same to partly allow the M.A.C.P. No.352 of 1993, M.A.C.P. No.354 of 1993 and M.A.C.P.No.349 of 1993 as against Respondent Nos.1 and 2 and dismiss the said claims as against Respondent Nos.3 and 4. Thus, the Appeals succeed, accordingly.

23.1) Hence, following Order is passed.

- i) F.A. No.717 of 2003, F.A. No.718 of 2003 and F.A. No.716 of 2003 are partly allowed with proportionate costs against Respondent Nos.1 and 2.
- ii) The impugned common Judgment and Order dated 30/11/2000, in Motor Accident Claim Petition No.349 of 1993, No.350 of 1993, No.351 of 1993, No.352 of 1993, No.354 of 1993, No.355 of 1993 and No.363 of 1993, passed by the Motor Accident Claims Tribunal, Sangli is set aside in respect of Motor Accident Claim Petition No.349 of 1993, No.352 of 1993 and No.354 of 1993.
- iii) M.A.C.P. No.352 of 1993, M.A.C.P. No.354 of 1993 and M.A.C.P. No.349 of 1993 are partly allowed as against Respondent Nos.1 and 2.
- iv) The M.A.C.P. No.352 of 1993, No.354 of 1993 and No.349 of 1993 are dismissed as against Respondent Nos.3 and 4.
- v) The Respondent Nos.1 and 2 shall jointly and severally pay the Appellant Shivling Vithal Barge a sum of Rs.80,917/-

(inclusive of NFL amount) together with interest at the rate of 8% per annum from the date of the Claim Petition till realisation of the amount.

vi) Respondent Nos.1 and 2 shall jointly and severally pay the Appellant Sou. Vimal Vithal Barge a sum of Rs.1,66,514/- (inclusive of NFL amount) together with interest thereon at the rate of 8% per annum from the date of the Claim Petition till realisation of the amount.

vii) Respondent Nos.1 and 2 shall jointly and severally pay the Appellant Shri. Vithal Govind Barge a sum of Rs. 85,842/- (inclusive of NFL amount) together with interest thereon at the rate of 8% per annum from the date of the Claim Petition till realisation of the amount.

viii) Respondent Nos.1 and 2 shall deposit the aforesaid amounts in the Tribunal within two months from the date of uploading of this Judgment on the official website of this Court.

ix) On deposit of the amount, the Tribunal shall immediately give notice to the Appellants to withdraw the compensation amount along with interest.

x) Appeals are disposed of in aforesaid terms.

xi) R & P received from the Tribunal shall be immediately sent back.

(SHYAM C. CHANDAK, J.)