

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

FIRST APPEAL NO. 310 OF 2003

Baldevbhai Jayantilal Patel,
Age : 36 Years, Occu. : Driving,
R/o New Sahjanand Society,
Block No. 1/2/2, Opposite
Navnirman High School, Ranip,
Ahmedabad (Gujrath). .. Appellant

Versus

1. Laxman Sitaram Nannaware,
Age : 24 Years, Occu. : Tractor driver,
R/o Bambhori, Tq. Erandol,
Dist. Jalgaon.
2. Chandrakant Shankar Kapse,
Age : ___ Years, Occu. : Tractor owner,
R/o Kapse Galli, Pimprala,
Tq. & Dist. Jalgaon.
3. The New India Assurance Co. Ltd.,
Branch Office, Jalgaon.
4. Revabhai Shivramdas Patel,
Age : ___ Years, Occu. : Matadeo owner,
R/o Motimadh, Gojrai,
Tq. Vaijapur, Dist. Mehsana,
(Gujrath).
5. The National Insurance Co. Ltd.,
Branch Office, Jalgaon. .. Respondents

Shri G. V. Wani, Advocate for the Appellant.

Shri M. M. Ambhore, Advocate for the Respondent No. 3.

Shri V. N. Upadhye, Advocate for the Respondent No. 5.
The Respondent Nos. 1, 2 and 4 are served.

CORAM : S. V. GANGAPURWALA, J.
DATE : 10TH SEPTEMBER, 2015.

ORAL JUDGMENT :

. The present appellant had filed application U/Sec. 166 of the Motor Vehicles Act claiming compensation on account of injury sustained in an accident. The said claim application is rejected. Aggrieved thereby present appeal.

2. Mr. Wani, the learned counsel for the appellant submits that, the Tribunal wrongly came to the conclusion that the present applicant driver of the metador was solely negligent for the cause of the accident. According to the learned counsel, even one passenger of the metador has specifically deposed in the present proceeding, it was the driver of the tractor who was solely negligent. The learned counsel submits that, only on the basis of statement made in other proceedings, the Tribunal erroneously came to the conclusion that the present appellant was responsible for the accident. According to the learned counsel, even the spot panchanama and the complaint has not been properly scrutinized and scanned by the Tribunal. The learned counsel submits that, the salary of the appellant was Rs. 3,000/- per month. According to the learned counsel he has suffered 45% permanent disability. Even medical expenses are to

be considered which are to the tune of Rs. 20,000/-.

3. Mr. Ambhore, the learned counsel submits that, the Tribunal has considered the evidence on record and the documents and has rightly come to the conclusion that the driver of the metador was solely responsible for the accident. He was driving the vehicle in rash and negligent manner. There was no proof of income. Even the present respondent was not insurer of the tractor. The cover note produced is erroneously relied upon. Actually said cover note is covering motorcycle.

4. I have considered the submissions. As far as aspect of negligence is concerned, there are documents on record. It appears that, it is case of head on collision. When it is case of head on collision, normal presumption would be the drivers of both the vehicles are equally responsible, unless some other evidence is brought on record. The passenger in the metador in the present proceeding has deposed about the negligence of tractor driver. The driver of tractor has not stepped in to witness box. Actually he would be best witness. Considering it is head on collision, 50% negligence can be attributed to the present appellant, who is driver of metador.

5. As far as income is concerned appellant himself stated that, he was earning Rs. 3,000/- per month as a driver and now he is doing a labour work. The loss of income would be Rs. 1300/-

per month. Considering 50% negligence it would come to about Rs. 750/- per month. The multiplier of 17 would be application. As such, towards loss of income the appellant would be entitled for Rs. 84,000/-. Though there is no proof of medical bills on record, still it is matter of record that the appellant has suffered injuries. The disability certificate is on record issued by the Civil Surgeon and the Superintendent of Medical College and Hospital Dhule, which shows the injury such as head injury, fracture of skull, fracture of cervical spine. As such, it would be reasonable to hold that the appellant would have incurred Rs. 30,000/- as expenses. Towards pains and sufferings the appellant would be entitled for an amount of Rs. 25,000/-. Considering the above, I award Rs. 25,000/- under that head. As such, the appellant would be entitled for an amount of Rs. 1,39,000/-.

6. In the result I pass the following order.

7. The respondent Nos. 1, 2 and 3 are jointly and severally liable to pay an amount of Rs. 1,39,000/- to the appellant along with interest at the rate of Rs. 6% per annum from the date of petition till its realization. The first appeal accordingly is partly allowed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]