

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

First Appeal No. 1603 of 2015

Rajendra Ramkisan Lokhande,
Age : 35 years,
Occupation : Dairy Business &
Agriculture,
R/o. At Post Sultanpur,
Taluka : Shevgaon,
District : Ahmednagar.

.. Appellant
(Original claimant)

versus

Pandharinath Murlidhar Kashid,
Age : 45 years,
Occupation : Service,
r/o. At Post : Dahigavne,
Taluka : Shevgaon,
District : Ahmednagar.

.. Respondent
(Original respondent)

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Mr. P.R. Nangare, Advocate, for the appellant.

Mr. G.K. Thigle, Advocate, for the respondent.

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CORAM : A.M. BADAR, J.

DATE : 18TH DECEMBER 2015

ORAL JUDGMENT :

1. By this appeal under Section 173 of the Motor Vehicles Act, 1988 [For short, hereinafter referred to as “MV Act”], injured claimant is challenging the judgment and award passed by the learned Member of the

Motor Accident Claims Tribunal, Ahmednagar, on 10-12-2014, between the parties in M.A.C.P. No. 306/2006, thereby rejecting the injury claim lodged by the appellant. Respondent herein was the respondent before the learned Tribunal. For the sake of convenience, parties shall be hereinafter referred to as per their original capacity.

2. According to the claimant, he is agricultural labourer as well as having dairy business. His monthly income is Rs. 2,500/-. The claimant further contended that on 5-6-2005 while he was proceeding by walk to his house from Shahartakali after purchasing grocery, he was knocked down by the respondent who was riding the motorcycle. According to the claimant, he suffered fracture injury and was required to take medical treatment at Hadake Hospital at Shevgaon as well as Accident & Super Speciality Centre of Dr. V.N. Deshpande at Ahmednagar. According to the claimant, he suffered permanent disability and therefore prayed for awarding compensation of Rs. 2,00,000/- from the respondent.

3. The respondent contested the claim by contending that the accident happened because of negligence of the claimant himself. The respondent further contended that he himself had incurred medical expenses of the claimant. However, false claim is lodged.

4. After framing necessary issues, parties went for trial. In support of his claim, claimant adduced evidence at Exhibit 21. The learned Tribunal then closed his evidence. The respondent also did not enter into witness box. Ultimately by the impugned judgment and award

dated 10-12-2014, the learned Tribunal was pleased to dismiss the claim petition.

5. Heard Mr. Nangare, the learned Counsel appearing for the appellant - claimant. He vehemently argued that though there is evidence on record for awarding compensation to the claimant, by adopting perverse approach the learned Tribunal dismissed the injury claim with totally incorrect reasoning.

6. As against this, Mr. Thigle, the learned Counsel appearing for the respondent drew my attention to para 12 of the impugned award and submitted that the claimant was guilty of suppression of material facts. By relying on judgment of the Hon'ble Apex Court in the case of ***Dalip Singh Vs. State of Uttar Pradesh & others***, reported in (2010) 2 SCC 114, the learned Counsel for the respondent argued that the claim was in fact abuse of the process of law and because of suppression of material facts, the claimant was rightly found to be not entitled to any relief. The learned Counsel for the respondent further argued that last chance was granted to the claimant on 7-10-2014 but still he has not taken care to adduce necessary evidence.

7. Perused record and proceedings including oral evidence as well as documentary evidence placed on record by the parties. It is seen from the impugned judgment and award that the learned Tribunal by considering that the claim petition is pending from the year 2006, carried the impression that it is an old matter and proceeded to close evidence of the claimant on 9-12-2014 with a reason that the claimant has failed to

produce his witness. The learned Tribunal further observed that though the claimant had not taken medical treatment from Mumbai still he has filed certificate in Form "B" of Dr. V.N. Deshpande from Mumbai. The learned Tribunal further observed that though the learned Counsel for the claimant has argued that the claimant sustained fracture injury to his knee, medical certificate in Form "B" shows that the claimant suffered fracture injury to tibia and fibula. The learned Tribunal was also influenced by the fact that in the criminal case, the respondent was acquitted. With all these facts in mind and by considering that the claimant suppressed the material facts, the claim petition came to be rejected. Perusal of the impugned judgment shows that the learned Tribunal has not given any finding as to whether the accident happened because of rash and negligent driving of rider of the motorcycle bearing No. MH-16/C-4594.

8. It hardly needs to mention that the Tribunal adjudicating claim under the MV Act is enjoined with the statutory duty of awarding just and reasonable compensation to the victims of the vehicular accident. Section 168 of the MV Act mandates that the compensation awarded to the claimant / victims of the vehicular accident must be just and reasonable. If judgment and award of the learned Tribunal is viewed from the angle of statutory duty casted on the Tribunal, then by no stretch of imagination it can be said that the judgment and award dismissing the injury claim is just and legal. Even oral evidence of the claimant is sufficient to come to the conclusion that because of the vehicular accident, left leg of the claimant was fractured and by surgical procedure the rod was implanted in it. His evidence shows that the accident happened because the claimant was dashed by the motorcycle driven and owned by the respondent. From the

Roznama dated 9-12-2014, it is seen that the learned Tribunal observed that order below Exhibit 1 is passed and evidence of the claimant is closed. It is seen on perusal of order dated 9-12-2014 below Exhibit 1, that the learned Tribunal closed evidence of the claimant by stating that no witness is produced by the claimant and therefore his evidence is closed. Thereafter immediately on 10-12-2014, the award came to be passed. This hurry is not expected from the Motor Accident Claims Tribunal while adjudicating the claim in respect of compensation under Section 166 of the MV Act when the Tribunal is enjoined with the duty of awarding just and reasonable compensation.

9. Be that as it may, perusal of the impugned judgment and award shows that it is totally perverse. Apart from overlooking the oral evidence of the claimant, the learned Tribunal misread the certificate issued by Dr. V.N. Deshpande which is on record. Perusal of this certificate shows that Dr. Deshpande is holding degree of M.S. Orthopaedics from Bombay University. He is having hospital at King's Road near Kothala Stand at Ahmednagar. However, the learned Tribunal has recorded perverse finding that the claimant had not taken treatment from Dr. V.N. Deshpande by going to Mumbai. Evidence of the claimant do show that he had taken treatment at Accident & Super Speciality Hospital at Ahmednagar. This hospital is of Dr. V.N. Deshpande as seen from the certificate relied by the learned Tribunal.

10. Submissions of the learned Counsel for the claimant appears to have been misconstrued by the learned Tribunal by holding that it was argued that the claimant has suffered fracture injury to his knee but the

medical certificate shows that it was injury to tibia and fibula. It is not expected of the layman to point out the exact medical terms. The learned Tribunal also lost sight of the fact that the standard of proof in civil as well as criminal cases are totally different. Before the Tribunal, the claimant was bound to prove the facts regarding the accident and his claim by preponderance of probabilities. However in criminal trial, guilt of the respondent is required to be established beyond all reasonable doubts. Suppression of material fact, if any, cannot be a ground for rejection of claim because the Tribunal is not enjoined with equitable jurisdiction. The Tribunal is supposed to adjudicate the claim for compensation as per evidence before it.

11. For the above stated reasons, the impugned judgment and award regarding the claim cannot be sustained. It needs to be set aside in order to see that the victim of the vehicular accident is awarded just and reasonable compensation. At this juncture, a useful reference can be made to judgment of the Hon'ble Apex Court in the case of ***Nagappa Vs. Gurudayal Singh*** reported in ***2008 AIR SCW 2605***, wherein the Hon'ble Apex Court has held that Tribunal is duty bound to award just compensation which must be reasonable in accordance with the evidence adduced on record.

12. In the result, the Appeal is allowed.

(i) Impugned judgment and award dated 10-12-2014 passed by the learned Member of the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No. 306/2006, between the parties, is quashed and set aside and

the matter is remanded back to the learned Tribunal for its decision afresh on merits. The Tribunal shall grant necessary opportunity of hearing including that of adducing evidence to the parties and then it shall decide the claim petition in accordance with law.

(ii) The learned Chairman of the Motor Accident Claims Tribunal, Ahmednagar, is requested to entrust this matter to some other Member of the Tribunal than the one who has decided the same, for its adjudication.

(iii) Both parties before this Court agree that they shall appear before the learned Tribunal on 21st January 2015 and they shall abide by further instructions of the Tribunal in the matter.

13. The Appeal is disposed of in the aforesaid terms with no order as to costs.

14. Record & proceedings be sent to the learned Tribunal expeditiously.

(A.M. BADAR)
JUDGE

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