

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

First Appeal No.333 of 2002

* Gangadhar S/o Dadarao Patil,
Age 50 years,
Occupation : Service
Gram Sevak, Panchayat Samiti,
Aurangabad, Baijipura, Aurangabad,
Taluka and District Aurangabad
At present serving as Gram Sevak
Gram Panchayat, Pandharpur,
Taluka and District Aurangabad. .. **Appellant.**

Versus

- 1) Shaikh Riyajoddin s/o Karim Patel,
Age 53 years,
Occupation : Business,
R/o Shahgad, Taluka Ambad,
District Jalna.
- 2) Oriental Insurance Co. Ltd.,
Divisional Office, Aurangabad,
Through its Branch Office,
"Yashodhan", Subhash Road,
Beed, District Beed. .. **Respondents.**

Shri. Ajinkya Kale, Advocate, holding for Shri. S.B.
Talekar, Advocate, for appellant.

Shri. S.S. Kazi, Advocate, for respondent No.1.

Shri. Dhananjay Deshpande, Advocate, for respondent
No.2.

CORAM: T.V. NALAWADE, J.

DATE : 8th DECEMBER 2015

JUDGMENT:

1) The appeal is filed by the owner of the offending vehicle against the judgment and award of the Claim Petition No.24/1995 which was pending before the Chairman, Motor Accident Claims Tribunal, Beed. In respect of injury sustained by the claimant, compensation of Rs.2,00,000/- is granted and only the owner is made liable to pay compensation. As two motor cycles were involved in the accident, the owner of the motor cycle who is made liable to pay compensation has filed the present proceeding. Heard both sides.

2) The accident took place on 2-5-1994 at about 8.00 to 8.30 p.m. on Georai - Shahagad road near Godavari Spun Pipe factory. The claimant was riding a motor cycle and he was proceeding from side of Shahagad to Georai i.e. north to south. It is his case that on the spot of the accident the other motor cycle bearing No. MH-20-B-5368 came with excessive speed, which was not having

head light, it came to the wrong side of the road and then gave dash to the motor cycle of the claimant as the said rider could not control his motor cycle. It is the case of the claimant that the accident took place due to rash and negligent act of respondent No.1 Gangadhar who was riding the other motor cycle.

3) It is the case of the claimant that he sustained many grievous injuries like compound fracture, right tibia finula and due to the injuries he was indoor patient from 30-5-1994 to 9-6-1994 on the first instance and he was required to undergo operation. It is his case that he was required to be admitted subsequently also but even after treatment and spending huge amount he is not fully recovered. He had claimed Rs.17,000/- towards treatment. He had claimed Rs.15,000/- under the head of medicines and he had claimed compensation of Rs. One lakh under the head of permanent disability. He had claimed compensation of Rs.20,000/- under the head of loss of future earning also.

4) The insurance company filed written statement and it denied everything.

5) It appears that the owner appeared in the proceeding but did not file written statement and so "No WS" order was made. The claimant examined himself and he produced record like bills of medicine etc and also record like discharge card prepared by the hospitals on all occasions when he was admitted in the hospital. He examined one eye witness Ashok Kale. He examined Dr. Dilip Patwardhan to prove that he received treatment and he was required to spend amount on treatment. He produced disability certificate issued to him by the Medical Board of District Hospital Beed showing that there is 50% temporary impairment and he produced permanent disability certificate to show that its extent is 7% due to fracture injury. The MLC of the Government hospital is also produced. All these documents are proved in the evidence of two doctors.

6) The evidence of the claimant shows that he was working as contractor. He has given evidence that he

could not do business for some time due to injury sustained by him and his earning capacity has come down as his movements are restricted. His age was 48 years on the date of the accident. The Tribunal has considered the age mentioned in the medical record and has held that he was probably above 50 years of age and accordingly multiplier is used. The Tribunal has presumed that monthly income was Rs.1,000/- as per notional income and there is monthly loss of Rs.400/-. The bills of medicine which were of subsequent period also are considered and the Tribunal has observed that total amount of Rs.2.21 lakh could have been granted. However, amount was claimed as Rs.2,00,000/- and this amount is granted by the Tribunal along with interest at the rate of 9% per annum.

7) Learned counsel for the appellant submitted that opportunity needs to be given to the appellant to contest the matter as the matter is decided against him virtually *ex-parte*. It appears that the motor cycle of the appellant was not insured and so liability is not fastened on the insurance company and that appears to be the main ground for challenging the decision. For getting

remand of the matter it was necessary for the appellant to show that he had sufficient cause due to which he was not turning up before the Tribunal. The contentions made in the appeal show that the appellant also sustained injury. He wants to prove that there was contributory negligence of the original claimant and for that he wants remand of the matter.

8) To ascertain as to whether there is some case to the appellant after the remand this Court has carefully gone through the record like police papers and the substantive evidence. As per the spot panchanama and the evidence given by the claimant, the accident took place on Shahagad-Georai road. The claimant was proceeding from Shahagad to Georai when the appellant was proceeding to Shahagad side. Learned counsel for the appellant submitted that after the accident the vehicles were found on the western side of the road and in view of this circumstance, there is possibility of head-on collision. Such inference cannot be drawn when there is direct evidence of the claimant. There is evidence of one eye witness. There are circumstances like police filed case

against the appellant and not against the claimant. The appellant did not give report to police after the accident and he did not file claim petition against the claimant out of that accident. Submission was made that the appellant was also injured in the accident. If he was really injured he would have filed claim petition against the original claimant but that did not happen. He did not give report against the claimant that the claimant had caused the accident. In view of these circumstances, it is clear that only due to circumstance like absence of insurance of the vehicle the appellant has challenged the decision. This Court holds that it is not possible to set aside the decision and remand the matter. Learned counsel for the appellant placed reliance on a case reported as **(2015) 7 SCC 373 (Himalayan Coop. Group Housing Society v. Balwan Singh)**. This case was on different point and it was on the point of statement which may be made by Advocate in a Court proceeding. In the present matter it was necessary for the appellant to show that there was sufficient cause for him for not filing written statement and for not turning up before the Tribunal. The accident took place in the year 1994, evidence was given in the year 2000 and the

petition was decided in the year 2001. In view of these circumstances, this Court holds that it is not possible to remand the matter.

9) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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