

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

First Appeal No. 1204 of 2014

New India Assurance Company Ltd.,
Aurangabad,
Through its Divisional Manager,
Adalat Road, Aurangabad.

.. Appellant
(Original respondent no.2)

versus

1. Gopal s/o. Purushottam Hishobe,
Age : 30 years,
Occupation : Services,
R/o. Ankush Nagar, Beed.

2. Shaikh Akabar s/o. Shaikh Ibrahim,
Age : 42 years,
Occupation : Rickshaw Driver,
R/o. Gore Vasti, Roshanpura,
Balepeer, Beed,
Taluka & District : Beed.

.. Respondents
(No.1 - Original claimant
&
No.2 - Original respondent
no.1)

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Mr. Santosh G. Chapalgaonkar, Advocate, for the appellant.

Mr. A.N. Nagargoje, Advocate, for respondent no.1.

Respondent no.2 served (Absent).

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CORAM : A.M. BADAR, J.

DATE : 19TH NOVEMBER 2015

ORAL JUDGMENT :

1. This is an appeal by the insurer of auto-rickshaw bearing

registration No. MH-44/C-5091 which allegedly dashed the claimant on 26-11-2009 at Nagar Naka located on Beed-Ahmednagar road. Appellant - Insurance Company is challenging judgment and award dated 12-3-2014, passed by the learned Chairman of Motor Accident Claims Tribunal, Beed, thereby partly allowing the claim petition filed by claimant / respondent no.1 herein and awarding compensation of Rs. 2,26,371/- with interest at the rate of 7 % per annum from the date of petition till its realization.

2. Respondent no.2 - owner cum driver of that auto-rickshaw was respondent no.1 in the said claim petition, whereas the appellant was respondent no.2. For the sake of convenience, parties shall be referred to in their original capacity.

3. Brief facts leading to the institution of the present appeal can be summarized thus :-

(a) According to claimant - Gopal s/o. Purushottam Hishobe, on 26-11-2009, he along with his friend Prakash Gaikwad, Police Constable, were standing by the side of Nagar Naka in the evening hours. At that time, auto-rickshaw bearing No. MH-44/C-5091 came in rash and negligent manner and gave dash to the claimant. Because of this accident, claimant suffered grievous injury to his right leg resulting in permanent disability. On all counts, claimant lodged claim of Rs. 3,00,000/- against respondents.

(b) Respondent no.1 - owner of the auto-rickshaw opposed the claim by filing written statement at Exhibit 18 with a specific contention that when

the claimant along with his friend Prakash Gaikwad were proceeding towards Balepeer on motorcycle, their motorcycle skidded and both of them fell down. Bystanders gathered there because of this accident and when respondent no.1 went there to see what happened, the claimant and his friend Prakash Gaikwad took auto-rickshaw number of respondent no.1. As Prakash Gaikwad was in employment of Police Department, false offence came to be registered. According to respondent no.1, involvement of his auto-rickshaw was claimed just to extract compensation from respondents.

(c) Respondent no.2 / present appellant - Insurance Company opposed the claim by filing written statement Exhibit 16. The Insurance Company denied particulars of accident as well as other particulars regarding the claimant. The Insurance Company also pleaded that it is at the instance of friend of the petitioner who at the relevant time was Police Constable, false case is tried to be made out for extracting compensation. The Insurance Company further pleaded that there was no loss of income or future income to the claimant he being in Government service. The Insurance Company contended that driver of the auto-rickshaw was not holding valid and effective driving license.

(d) On the basis of rival pleadings, issues were framed and parties went for trial. In support of his claim, claimant adduced his evidence. He also examined Dr. Pramod Shinde so also Bharat Shinde, Surveyor at T.I.L.R. office to prove salary income. In rebuttal, respondent no.1 - Shaikh Akbar, owner cum driver adduced evidence on affidavit at Exhibit 43 and he was cross examined by the claimant.

4. After hearing the parties, the learned Tribunal came to the conclusion that the accident happened because of rash and negligent driving of the auto-rickshaw involved in the accident. It is further held that the Insurance Company failed to prove that driver of the auto-rickshaw was not holding valid and effective driving license. The learned Tribunal allowed the claim petition partly and directed present respondent no.2 (Original respondent no.1) and respondent no.2 (Present appellant) - Insurance Company to pay Rs. 2,26,371/- jointly and severally to present respondent no.1 (Original claimant) as a compensation with interest at the rate of Rs. 7 % per annum from the date of the petition till realization.

5. Heard the learned Counsel appearing for the appellant. Perused the record and proceedings with the assistance of the learned Counsel appearing for the parties. By drawing my attention to the FIR at Exhibit 25 and spot Panchanama at Exhibit 26, the learned Counsel for the appellant submitted that though the accident happened on 26-11-2009, FIR of the same was registered on 8-12-2009. He further argued that as per version of the claimant, Prakash Gaikwad, a Policeman, was accompanying him at the time of accident and even after the accident. The learned Counsel for the appellant further argued that said Prakash Gaikwad had admitted the claimant in the hospital. In the wake of this positive case of the claimant, delay in lodging the FIR goes to the root of the matter and the necessary inference that a false case is being lodged for extracting compensation needs to be drawn. The learned Counsel for the appellant further argued that there is positive evidence on record coming from the mouth of owner of the auto-rickshaw, namely, Shaikh Akbar and

this evidence goes to show that insured auto-rickshaw was not at all involved in the accident in question. In this view of the matter, in submission of the learned Counsel for the appellant, appeal needs to be allowed and claim petition deserves to be dismissed.

6. Mr. Nagargoje, the learned Counsel appearing for respondent no.1 - claimant, supported the impugned award by contending that evidence of the claimant was rightly accepted by the learned Tribunal and as such, the appeal deserves to be dismissed. He pointed out that, in fact, statement of injured claimant was recorded at the hospital and subsequently it was sent to the Police Station for registration of offence. According to him, FIR was lodged by the claimant on 26-11-2009 itself but Police registered the crime subsequently as from Aurangabad it was sent to Shivajinagar Police Station, Beed.

7. At the outset, let us examine whether finding of the learned Tribunal in respect of involvement of auto-rickshaw bearing registration No. MH-44/C-5091 is in consonance with the evidence on record. Claimant had specifically pleaded that when he along with his friend Prakash Gaikwad were standing at Nagar Naka at Beed, the auto-rickshaw gave dash to him causing the accident. As against this, respondent no.1 - Shaikh Akbar, owner cum driver of the auto-rickshaw came up with a specific stand that accident happened as motorcycle of the claimant slipped. It is his stand that he went on the spot of the incident out of curiosity as lot of people gathered there and at that point of time, the claimant and his friend Prakash Gaikwad - Policeman obtained registration number of his auto-rickshaw in order to lodge a false FIR for making a

false claim.

8. Evidence of claimant - Gopal is perfectly in tune with his pleadings that while he was standing along with his friend Prakash Gaikwad, the auto-rickshaw came in a rash and negligent manner and gave dash to him causing the accident. However, when we perused the evidence of respondent no.1 - Shaikh Akbar, then it needs to be noted that the same is far from satisfactory. He has not proved the facts pleaded by him in the written statement. Respondent no.1 - Shaikh Akbar has not deposed that accident happened because motorcycle driven by the claimant slipped / skidded and that he went on the spot just out of curiosity. Evidence of Shaikh Akbar is conspicuously silent regarding his averment in the written statement that when he went to the spot, the claimant and his Police friend collected registration number of his auto-rickshaw for lodging a false FIR and a false claim.

9. The claimant is the victim of the vehicular accident as undisputedly he suffered injuries in the said accident. When his evidence is compared with the evidence of the owner of the offending vehicle, then it needs to be held that evidence of the claimant passes test of credibility as well as trustworthiness. Scanty and sketchy evidence of owner of the auto-rickshaw who is interested in defending the claim against him, as such, cannot be relied upon to hold that the auto-rickshaw was not involved in the accident in question. In cross examination of the claimant, it was brought on record that he do not remember if he had given intimation to Police at Aurangabad after 11 days of the incident. Perusal of FIR at Exhibit 25 goes to show that Police Head Constable of Jawahar

Police Station at Aurangabad went to Bembde Hospital at Aurangabad and recorded statement of injured claimant Gopal. It appears that subsequently this statement was forwarded to Police Station, Shivajinagar, Beed, where the crime was registered on 8-12-2009. Photo-copy of the FIR though faintly shows that date of recording it as 26-11-2009, considering the fact that FIR was recorded by Police personnel from Jawaharnagar Police Station at Aurangabad and the crime was registered subsequently on the basis of that statement by Shivajinagar Police Station at Beed on 8-12-2009, it cannot be said that claimant had lodged FIR belatedly by going to Police Station at Beed. It appears that while taking medical treatment at Bembde Hospital at Aurangabad, soon after the accident, statement of the claimant was recorded on 26-11-2009 itself and his statement was subsequently treated as FIR by the Police. As such, no suspicion can be raised by imputing the conduct of lodging the FIR belatedly to the claimant for disputing the involvement of auto-rickshaw in the accident in question. Consequently, no capital can be made out of the fact that in spot Panchanama recorded on 8-12-2009, no evidence of accident was found. Cumulative effect of the above discussion leads me to conclude that the finding of the learned Tribunal that the claimant suffered injuries in the accident in question because of dash of auto-rickshaw of respondent no.1 was perfectly based on evidence available on record and as such, needs no interference.

10. This now leads me to consider challenge to the compensation of Rs. 50,000/- on account of permanent disability. The claimant had suffered 8 % permanent disability as seen from evidence of Dr. Pramod Shinde. It is well settled that separate compensation needs to be awarded

for permanent disability suffered by the claimant. Moreover, in the case in hand, it was found that the claimant was not entitled for any amount towards loss of future income. The claimant had suffered 8 % disability because of fracture injury to right foot tendon and neurovascular injury. Considering the nature of injury and percentage of disability, no fault can be attributed towards awarding amount of Rs. 50,000/- on account of permanent disability

11. In the result, the Appeal is devoid of merit and the same is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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