

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

First Appeal No. 1684 of 2015

Mohan s/o. Bhanudas Andale,
Age : 45 years,
Occupation : Service,
R/o. Hingni (Kh),
Taluka & District : Beed.

.. Appellant.

versus

Uttam s/o. Nilappa Mirgale,
Age : 45 years,
Occupation : Business,
R/o. Ambulga, Taluka : Nilanga,
District : Latur.

.. Respondent.

.....

Mr. Annasaheb S. Kadam, Advocate, for the appellant.

Mr. S.M. Sangale, Advocate, for the respondent (Absent).

.....

CORAM : A.M. BADAR, J.

DATE : 7TH DECEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, by unsuccessful claimant before the Motor Accident Claims Tribunal, Beed, in M.A.C.P. No. 127/2009.

2. After calling record and proceedings in this matter, it was

made clear to the parties that the appeal shall be heard finally at the stage of admission itself, considering the limited controversy involved in the instant case. For the sake of convenience, parties hereinafter shall be referred to as per their original capacity.

3. Heard the learned Counsel appearing for the appellant and perused record and proceedings. The learned Counsel appearing for the appellant / original claimant vehemently argued that because of inadvertence, the learned Counsel for the claimant had not joined driver as well as Insurance Company of the tractor and trolley as party respondents to the proceedings. He further argued that the learned Tribunal erred in deciding the matter without granting opportunity of hearing to the parties. He further argued that without considering the medical evidence on record, the claim petition is decided by the learned Tribunal. In his submission, the rash and negligent act on the part of driver of the tractor - trailer was established on record from the evidence of the claimant, still the learned Tribunal rejected the claim for compensation.

4. None appeared for arguing the matter on behalf of respondent.

5. It was case of the claimant before the Tribunal that on 18-10-1998, he was riding motorcycle bearing registration number MH-23/8483. A tractor - trailer bearing registration No. MH-24/A-6876 was plying ahead of him. It was owned by the respondent. The claimant further pleaded that driver of that tractor - trailer instantaneously applied brakes causing collision of the claimant against the backside of that tractor - trailer causing the accident in question. In that accident, the claimant sustained fracture injury to his right leg for which he was treated at Civil

Hospital at Beed as well as Bajaj Hospital at Aurangabad. The accident has resulted in registration of crime against driver of the tractor - trailer. With these averments, claim of Rs. 2,00,000/- was made by the claimant against the owner of the tractor - trailer.

6. By filing written statement, the claim was resisted by the respondent by contending that the accident took place because of rash and negligent riding of the motorcycle by the claimant himself. It was contended that the tractor - trailer was driven properly but the driver thereof is falsely impleaded in Police case.

7. On the basis of rival pleadings, issues were framed and parties went for trial. In support of the claim, claimant Mohan Andhale adduced his evidence at Exhibit 14 and he was cross examined by the learned Counsel for the respondent. Thereafter, claimant filed Pursish at Exhibit 19 stating that he does not want to lead further evidence. On behalf of the respondent, evidence on affidavit was placed on record at Exhibit 21 and the respondent was cross examined on behalf of the claimant. The respondent also placed on record Pursish at Exhibit 22 closing his evidence. It appears that thereafter despite granting two opportunities, oral arguments were not advanced by the parties. The case was posted for judgment thereafter. Ultimately it was decided without hearing oral submissions on behalf of the learned Counsel appearing for parties as they had chosen not to advance oral arguments.

8. Though at the trial stage the learned Counsel appearing for the claimant could not advance his oral arguments, I heard him extensively. I have carefully perused evidence of claimant Mohan

Andhale. His evidence is perfectly in tune with his pleadings to the effect that he was riding the motorcycle and the tractor - trailer in question was proceeding ahead of him. Though in chief examination of this witness he has stated that the tractor - trailer applied brakes instantly, cross examination of this injured claimant is very relevant. It is seen from his cross examination that he was riding motorcycle at the speed of 40 Kms per hour. His cross examination shows that he had kept distance of 1 Metre 10 feet in between his vehicle and the tractor - trailer proceeding ahead. In another breath, he had stated that there was distance of 15 to 20 feet in between both of the vehicles. In cross examination, the claimant admitted that brake of his motorcycle was in very good condition.

9. At this juncture, it is apposite to note that claim under Section 166 of the Motor Vehicles Act, 1988, cannot be awarded unless and until there is proof of negligence of the offending vehicle. It is well settled in the case of **Minu B. Mehta & another Vs. Balkrishna Ramchandra Nayan & another**, reported in **AIR 1977 SC 1248**, that in case compensation is awarded without proof of negligence, it would lead to a strange result and it is incumbent on the part of the claimant to prove negligence before the owner or insurer can be fastened with the liability to pay compensation. Same principle was followed in the case of **Jayashri Vijayasinghrao Khalate & others Vs. Bhagivatlal Attarchand and others**, reported in **1997 ACJ 32**. It is held by this Court therein that if the victim himself is negligent in causing the accident, claim for compensation cannot be held to be maintainable.

10. In the case in hand, the tractor - trailer was proceeding ahead and the claimant riding the motorcycle was behind that vehicle. As a

person of normal ordinary prudence, it was expected of the claimant to keep safe distance between his vehicle as well as the tractor - trailer. It is seen from cross examination of the claimant that the claimant has failed to take a care which is expected of a person of ordinary prudence. Had he kept safe distance between two vehicles i.e. his motorcycle and tractor - trailer, then he would not have dashed against rear portion of the tractor - trailer. As the claimant was behind the tractor - trailer, it was expected of him to be vigilant in riding his motorcycle. However as he dashed the motor vehicle proceeding ahead of him, it needs to be held that the claimant himself was negligent in riding the motorcycle. Ultimately negligence is a breach of duty or lack of proper care in doing something. Negligence is want of attention and doing of something which a prudent man would not do. Here the claimant himself had not taken proper care by keeping safe distance from the tractor - trailer and his motorcycle. He had not applied brakes and rather dashed rear portion of the tractor - trailer. Considering this nature of evidence, no fault can be found with the finding of the learned Tribunal that the accident happened because of sole negligence of the claimant and therefore the claim is rightly rejected by the learned Tribunal.

11. As no perversity could be found in the impugned judgment and award, the appeal is devoid of merit and the same is accordingly dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

.....