

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 237 OF 2004

1. Shri Rajendra Baburao Dehadrai,  
Age 35 years, Occ. Agri.  
R/o. At present Dabhadi,  
Tq. Badnapur, District Jalna
  2. Kacharu Bandu Kharat  
(Since deceased, through L.Rs.)
  - 2-A Smt. Aruna Kacharu Kharat  
Age 48 years, occ. Household,  
R/o. Palaskheda, Tq. Bhokardan  
District Jalna.
  - 2-B Pramod Kacharu Kharat  
Age 18 years, Occ. Education,  
R/o. Palaskheda, Tq. Bhokardan  
District Jalna.
  - 2-C Sadu Kacharu Kharat  
Age 12 years, occ. Education,  
(Minor through his natural  
guardian mother)  
Smt. Aruna Kacharu Kharat  
Age 48 years, occ. Household,  
R/o. Palaskheda, Tq. Bhokardan  
District Jalna.
- ...Appellants

versus

Ganesh Mhatarba Shewale  
Age 32 years, Occ. Agriculture  
R/o. Chikhali, Tq. Badnapur,  
District Jalna

...Respondent

.....  
Mr. S.R. Deshpande, advocate for the appellants  
Mrs. S.G. Chincholkar h/f Mr. G.N. Chincholkar, advocate for respondent  
.....

**CORAM : V. K. JADHAV, J.**  
**DATED : 27<sup>th</sup> APRIL, 2016**

**ORAL JUDGMENT:-**

1. Being aggrieved by the judgment and award dated 16.12.2003, passed by the learned member, M.A.C.T. Jalna in M.A.C. No. 163 of 1997, the appellant Nos. 1 and 2, original owner and driver, respectively, of the vehicle involved in the accident, have preferred this appeal.

2. Brief facts, giving rise to the present appeal are as under:-

a) On 23.4.1997, the claimant Ganesh wanted to go to village Dabhadi. On way, respondent No.2 driver of the tempo gave him a lift. Accordingly, he started travelling in tempo bearing registration No. MCA 2698. On way, within the limits of village Chanegaon, all of a sudden due to rash and negligent driving of respondent No.2, said vehicle turned turtle and accordingly accident had taken place. In consequence of which, the claimant as well as other persons, travelling in the said tempo sustained injuries. The claimant Ganesh was immediately shifted to Primary Health Center, Rajur and from there to Civil hospital, Jalna. Even thereafter, he was referred to Medical College and Hospital, Aurangabad. The claimant on his own approached Dr. Satish Goel, since he could not get satisfactory and good treatment in Government hospitals. The injuries sustained by the claimant Ganesh resulted into permanent disablement.

b) According to the claimant, his earning capacity is reduced on account of permanent disablement sustained by him and thus, he filed M.A.C. No. 163 of 1997 for grant of compensation under various heads. The claim petition was strongly resisted by the respondents by filing their common written statement at Exh.23. They had admitted occurrence of accident, however, they have denied the age, income and permanent nature of disablement, alleged to have been sustained by the claimant. Furthermore, they also denied the expenses alleged to have been incurred by the claimant for his medical treatment. Learned Member, M.A.C.T. Jalna by its impugned judgment and award dated 16.12.2003 partly allowed the claim petition and thereby directed the respondents to pay Rs.75,000/- to the claimant, inclusive of no fault liability with interest @ 9% p.a. from the date of application till realization of the same with proportionate costs.

3. Learned counsel for the appellant submits that immediately after the accident the claimant was shifted to Primary Health Center, Rajur and therefrom he was shifted to Civil Hospital, Jalna. As per the claimant's own contention, from Civil hospital, Jalna he was referred to Medical College and Hospital, Aurangabad. The claimant has not produced any certificate with regard to the permanent

disablement sustained by him, procured from the said Government Hospitals but produced on record a certificate issued by a private practitioner. Learned counsel submits that as per Schedule I, the medical certificate should be in form Comp. B. The medical certificate Exh.28 issued by Doctor Goel, private practitioner, is exhibited by the Tribunal only on the basis that the same has been referred by the claimant in his oral evidence before the Tribunal. Learned counsel submits that even at the time of examination in chief of claimant, the respondent and their counsel were absent. The learned counsel submits that the author of said certificate was not examined before the Tribunal and it is therefore, difficult to find out nature of disablement sustained by the claimant and the effect of said disablement on his earning capacity. It is the duty of the claimant to prove the certificate and in absence of that, no compensation could have been awarded to him. There is only evidence towards medical expenses incurred by the claimant to the extent of Rs.8000/-. There is no evidence that any rod is inserted in the hand, as deposed by the claimant before the Tribunal. Learned counsel submits that in absence of any reliable and cogent evidence on record, the Tribunal has awarded lump sum compensation of Rs.75,000/-. Learned counsel submits that the compensation awarded by the Tribunal is without any evidence and foundation.

Learned counsel for the appellant, in order to substantiate his submissions, places reliance on the judgment in the case of ***Rajesh Kumar @ Raju vs. Yudhvir Singh and Anr, reported in 2008 (6) Mh.L.J. 21*** wherein the Supreme court has observed that unless the author of the certificate is examined, the certificate of disablement filed on record is not admissible in evidence.

4. Learned counsel for the respondent claimant submits that after the accident, though the claimant has taken treatment in the government Hospital at Jalna, as well as the Government Medical college at Aurangabad, he later on approached Dr. Goel, who is Orthopedics and private practitioner, as he was not satisfied with the treatment given in the Government Hospitals. The Tribunal in para 9 of the judgment has observed that concerned Dr. Goel is not examined and if doctor could have been examined, then he was the best witness to state all facts that what type of treatment given by him to the claimant and what type of injuries sustained by the claimant. Learned counsel submits that the Tribunal has thus, concluded that the claimant is therefore, not entitled for amount of compensation as claimed. Learned counsel submits that the Tribunal can hold enquiry into the claim and determine the just and reasonable compensation. Learned counsel submits that if the Tribunal has formed opinion that in absence of examination of Dr.

Goel as witness before him, it is not possible for the Tribunal to consider the claim for compensation of the claimant in its proper perspectives, then the Tribunal should have recorded the evidence of doctor, who treated the claimant. Learned counsel submits that so far as the medical certificate issued by Dr. Goel is concerned, the same is marked at Exh.28.

Learned counsel submits that the appellant/original owner and driver never raised any objection for exhibiting the said medical certificate before the tribunal and for the first time raised such objection before this Court, which is not permissible in law. In any case, the tribunal has failed in its duty to award just and reasonable compensation. In the facts and circumstances of the present case, in the interest of justice, it would be appropriate if the matter is remanded to the Tribunal for the enquiry to the extent of medical certificate, issued by Dr. Goel and further to produce on record Form Comp. B before the Tribunal.

Learned counsel for the respondent claimant in order to substantiate her contentions, places reliance on the judgment in the cases of ***Raj Kumar vs. Ajay Kumar and Anr. reported in 2011 (1) All MR 402 (S.C.) and ICICI General Insurance Co. Ltd. vs. Ransingh Dadla Pawra and others, reported in 2008 (6) Mh.L.J.***

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5. The claimant Ganesh has deposed before the Tribunal that after the accident, he went to Primary Health Center, Rajur and thereafter to Civil Hospital, Jalna. He deposed that he had fracture injury to his right hand. He thereafter referred to Medical College hospital, Aurangabad and thereafter he has taken treatment from private hospital of Doctor Goel at Jalna. He had further deposed that Dr. Goel operated his injuries and he was in the hospital of Dr. Goel as indoor patient for one and ½ months. Even he was required to take follow up treatment for further two months of Dr. Goel after discharge. He has further deposed that because of disability, he is not able to work. In order to substantiate his case, he has produced on record the certificate issued by doctor Goel and the same is marked at Exh. 28 during the course of his examination before the court. It appears from his examination in chief that the said certificate, issued by Dr. Goel came to be exhibited in his evidence itself. Admittedly, the claimant has not examined Dr. Goel before the Tribunal. Respondent No.2 and their counsel were absent at the time of examination of claimant. However, subsequently, with the leave of the court, subjected the claimant to cross examination. At that time, no objection was raised to the certificate of Dr. Goel exhibited by the Tribunal.

6. Let it be as it is, however, in para 9 of the judgment, the Tribunal has expressed its inability to grant compensation as claimed by the claimant for the reason that Dr. Goel would have been the best witness to state on facts about nature of disablement sustained by the claimant etc.

7. In the case of ***Rajkumar vs. Ajay Kumar and Anr. (supra)*** relied upon by the learned counsel for the respondent-claimant, in para 11 and 12, the Supreme court has made following observations:-

*“11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to ‘hold an enquiry into the claim’ for determining the ‘just compensation’. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the ‘just compensation’. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The*

*Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.*

*12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local*

*Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.”*

8. It is observed by the Supreme Court that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. It is further observed that the Tribunal therefore, take active role to ascertain the true and correct position so that it can assess the 'just compensation'. The Supreme Court has further observed that the Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injury.

9. In view of the above observations and in view of the facts and circumstances of the present case, in my considered opinion, this is fit case to be remanded to the Tribunal to the extent of examination of Doctor Goel. Needless to say that the appellants, original owner and driver, are at liberty to cross examine Dr. Goel. It appears from the evidence that the certificate in Form Comp. B is not issued by Dr. Goel, who is private practitioner. In the light of that, the respondent claimant is at liberty to procure certificate, if any, in Form Comp. B from Dr. Goel and produce it before the Tribunal and the Tribunal may accept its production subject to oral evidence of Dr. Goel on this point. At this stage, learned counsel for the appellant

vehemently submits that this is not the appeal preferred by the respondent claimant and no such order of remand can be passed in absence of any appeal filed by the original claimant or any cross objection in the present appeal. The order of remand can be passed if any material evidence is either ignored, misread or misconstrued or any other illegalities is committed.

11. In the light of above discussion and more particularly the observations of the Apex Court in the case of ***Raj Kumar (supra)***, this is a fit case to remand the matter to the Tribunal to the extent, as discussed above. Hence, I proceed to pass the following order:-

#### O R D E R

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 16.12.2003 passed by the learned Member, M.A.C.T. Jalna in M.A.C. No. 163 of 1997 is hereby quashed and set aside. The matter is remanded to the Tribunal with the following directions:-
  - “i. Re-admit the M.A.C. No. 163 of 1997 (Ganesh vs. Rajendra and another) to its original number and

proceed to decide the same.

ii. The evidence (if any) recorded during the course of original trial, shall be subject to all just exceptions, be evidence during the trial of claim petition after remand.”

III. The claimant is permitted to examine Dr. Goel as his witness and the respondents owner and driver are at liberty to cross examine the said witness.

IV. The claimant is permitted to procure the certificate in Form Comp. B from Doctor Goel and is at liberty to produce it before the Tribunal, who shall allow production of such document. Needless to say that the said certificate in Form Comp. B, if issued, by Dr. Goel, proof of said certificate will be subject to examination of Dr. Goel in this regard.

V. The matter is remanded to the extent of examination of Dr. Goel only and production of said certificate, as directed.

VI. The Tribunal shall decide the M.A.C. No. 163 of 1997

afresh, after giving opportunity of hearing to both sides,  
on its own merits, in accordance with law.

VII. The appeal is disposed of accordingly.

VIII. Needless to add that the observations made by this  
Court while disposing of the present appeal shall not  
cause any prejudice to trial of M.A.C. No. 163 of 1997  
after the remand.

**( V. K. JADHAV, J.)**

rlj/