

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

FIRST APPEAL NO. 308 OF 2014

NEW INDIA ASSURANCE CO. LTD. AURANGABAD THR.
ITS DIVISIONAL MANAGER AURANGABAD

VERSUS

PRAVIN ATMARAM RAUT AND OTHERS

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Advocate for Appellant : Mr S G Chapalgaonkar

Advocate for Respondents : Mr P K Ippar h/f Mr S J
Salunke

...

CORAM : V.K. JADHAV, J.

Dated: March 10, 2016

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PER COURT :-

1. Being aggrieved by the Judgment and award passed by the learned Member of Motor Accident Claims Tribunal, Ambajogai, dated 13.11.2013 in Motor Accident Claims Petition No.165 of 2008, the original respondent no.2 insurer preferred the present appeal.

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

a] The accident had taken place on 12.7.2008. On that date, the respondent claimant had gone alongwith tractor bearing registration No.MH-44/D-153 for transportation of the sand. The respondent-original

claimant was working as a labour. After transporting the sand at Kallamb, while returning from that village, on the way, said tractor met with an accident. On that day, while returning to village Chincholi Mali, on the way, one tempo bearing registration No.MH-10/Z-228 came from opposite direction in high speed and gave dash to the tractor, in consequence of which respondent/claimant sustained injuries on his wrist, forehead, face etc. He was immediately shifted to Rural Hospital, Kaij where he was treated. On 29.7.2008, one Nanasaheb Sapate lodged complaint in police station, Kaij and on the basis of his complaint, crime No.187/2008 came to be registered against driver of the Tempo. The claimant had sustained injuries which resulted into permanent disability. Consequently, the claimant filed Motor Accident Claim Petition No.165/2008 before the Tribunal for compensation. The learned Member of Motor Accident Claims Tribunal, Ambajogai, by its impugned order dated 13.11.2013 awarded compensation of Rs.30,000/- (Rs. Thirty Thousand) to the respondent-claimant from the owner of the tempo and present appellant jointly and severally.

Aggrieved by the same, the appellant-insurer of the Tempo preferred this appeal.

3. The learned counsel for the appellant submits that, this is a case of composite negligence and the accident took place on account of negligence of drivers of both the vehicles. Learned counsel submits that, the Tribunal has placed reliance only on the contents of the spot panchnama wherein location of the tractor was noted and till that time since the tempo was removed from that place, the position of the tempo was not shown in the spot panchnama. Learned counsel submits that, even the complaint is lodged belatedly against the driver of the tempo and, accordingly, crime came to be registered against him only.

4. Learned counsel for respondents/original claimants submits that, the crime was registered against tempo driver alone, and, in fact, he was responsible for the accident. Learned counsel submits that, the respondent/original claimant who is the injured witness examined before the Tribunal. He has

deposed that, while on the way, said tempo came from opposite direction in a high speed and gave dash to the Tractor. Learned counsel submits that there is nothing in his cross examination to disbelieve him. Learned counsel submits that, on the other hand, respondent-claimant was not at loss if he would have deposed against driver of both the vehicles. Learned counsel thus, submits that the Tribunal has rightly passed the order and awarded compensation to the claimant/original respondent no.1.

5. Following points arises for my determination and I have recorded my findings to those points for the reasons given below :-

POINTS

FINDINGS

1. Whether the injuries sustained by the respondent/claimant are on account of negligence by the drivers of Tractor bearing registration No. MH-44/D-153 and Tempo bearing registration No. MH-10/Z-228 and said injuries resulted into permanent disability ?

Against driver of the tempo.

2. Whether the claimant is entitled for compensation, if yes, from whom?

Yes. From Resp. No.1 & 2 Jointly & severally.

3. What Order ?

As per final order.

REASONS

6. On going through the evidence, it appears that, respondent-claimant has deposed that, on the way said tempo came from opposite direction in a high speed and gave dash to the Tractor. He has further deposed that tractor was going in slow speed from correct side. There is nothing in his cross examination to disbelieve his version. Furthermore, tempo owner has not examined the driver of the tempo to substantiate his case that the tractor driver was at fault. The appellant/original respondent no.2 has also not examined any witness to substantiate his contention that it is a case of composite negligence. Consequently, the learned Member of the Tribunal has rightly come to the conclusion that, the respondent-claimant has sustained injuries on account of rash and negligent driving of the driver of the tempo. The learned Member of the Tribunal has, thus, rightly held that respondent-claimant is entitled for compensation from respondent nos. 1 and 2 jointly and severally. There is no merit in the appeal. Accordingly, I

pass the following order.

O R D E R

- I. First Appeal is hereby dismissed with costs.
- II. In response to the order passed by this Court, the appellant/original respondent no.2 has deposited the amount under the Award before this Court. The Respondent-claimant is permitted to withdraw the same.

(V.K. JADHAV, J.)

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aaa/-