

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

FIRST APPEAL NO.174 OF 2003

Shri Dada s/o Bapu Pandhare,
Aged 31 years, Occu. Agri.
& labour, R/o. At Post Holewadi
Tal.Karjat, Dist. Ahmednagar.

**...APPELLANT
(Original claimant)**

VERSUS

1. Shri Saudagar s/o Govindrao
Jadhav, Aged 60 years,
Occu. Business,
R/o. Gorewadi, Post Korti,
Tal.Karmala, Dist. Solapur.
2. The Oriental Insurance Co.Ltd.
(Notice to be served on its
Divisional Office, Ahmednagar.)

...RESPONDENTS

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Mr.N.C.Garud, Advocate for the appellant.
Mr.V.C.Patil, Adv., h/f Mr. S.M.Godsay, for
Respondent no.2.
Respondent no.1 served.

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CORAM: P.R.BORA, J.

DATE :April 18th, 2016

ORAL JUDGMENT:

1. The appellant has filed the present appeal taking

exception to the judgment and award passed in MACP No.348/1996 on 29.4.2002, by the Motor Accident Claims Tribunal, Ahmednagar, whereby the aforesaid claim has been dismissed by the Tribunal.

2. The point involved in the present appeal is whether, in absence of vehicle inspection report on record, or the evidence of expert in that regard, the conclusion can be arrived at that accident happened because of the failure of brakes of the vehicle involved in accident, merely on an averment in a claim petition filed by the victim of the said accident that the accident happened because the brakes failed of the vehicle.

3. The appellant had filed the aforesaid claim petition claiming compensation from the owner and insurer of a tractor bearing registration No.MH-13-A-7786 on account of the injuries suffered by him while traveling on the said tractor as a Labour. It was the contention of the appellant that the driver of the offending tractor was driving the same in a rash and negligent manner. It was also the contention of the appellant that after brakes failed of the said tractor, the driver of the said tractor could not control the same and ultimately it turtled and in the accident that happened, he received a severe injury to

his right leg. It was also the contention of the appellant that he was required to be under treatment for a quite long period and was subjected to incur huge expenses. It was also the contention of the appellant that because of the injuries caused to him in the said accident, he has incurred 40 per cent permanent disability and his right leg was required to be amputated. The appellant had, therefore, claimed compensation of Rs.2,00,000/- (Rs. two lacs) from the owner and insurer of the said tractor.

4. Respondent no.1, who is the owner of the tractor, had filed his written statement before the Tribunal raising several objections to the claim petition filed by the appellant claimant. Respondent no.1 has denied that the accident in question happened because of the rash and negligent driving of his driver. Respondent no.1 also denied and disputed the age, income and the injuries suffered by the appellant and the permanent disablement incurred by him. Respondent no.2 Insurance Company had resisted the claim petition on the ground that the aforesaid tractor was being used for commercial purpose at the relevant time and thus, there was breach of the policy condition on the part of the owner of the said tractor, and the insurance company was, therefore, liable

to be exonerated from its liability to indemnify the insured.

5. The appellant had deposed before the Tribunal in order to substantiate the contentions raised by him in his petition and examined one more witness by name Manik Tukaram Jadhav. No oral evidence was adduced by the respondents.

6. Learned Tribunal, on its assessment of the oral and documentary evidence brought before it, dismissed the claim petition on the ground that the appellant failed in proving that the alleged accident happened because of the rash and negligent act of the driver of the offending tractor. In view of such finding recorded by the Tribunal, it did not find it necessary to enter into other aspects of the matter and thus, admittedly, has not discussed as about injuries caused to the petitioner and the disability incurred by him so as to determine the amount of compensation. Aggrieved by the judgment and award, the original claimant has filed present appeal.

7. Shri N.C. Garud, learned Counsel appearing for the appellant claimant, submitted that the Tribunal has failed in appreciating that throughout it was the contention of the

appellant that the driver of the offending tractor was rash and negligent in driving the said tractor and that has, in fact, contributed to the occurrence of the alleged accident. Learned Counsel submitted that, in the petition as well as in his evidence before the Court, the appellant has specifically alleged that the driver of the offending tractor was rashly and negligently driving the said tractor. In the circumstances, according to the learned Counsel, the Tribunal must have held that the accident in question happened because of the rash and negligent driving of the driver of the offending tractor. Learned Counsel submitted that even if it is assumed that the brakes of the tractor failed, had the driver of the offending tractor be diligent enough and would be driving the said tractor at moderate speed, it could have been easily controlled by him and may not have turtled and ultimately accident would not have taken place. Learned Counsel submitted that all these aspects have been overlooked by the Tribunal. Learned Counsel, therefore, prayed for setting aside the finding so recorded by the Tribunal and consequently, the impugned judgment and award.

In order to support his contentions learned counsel relied upon the judgment of the Honourable Apex Court in the case of **Minu B.Mehta and another Vs. Balkrishna**

Ramchandra Nayan and another (AIR 1977 SC 1248 (1)).

Learned Counsel further submitted that though the Tribunal has not gone into the aspect of injuries caused to the petitioner and, resultantly, has not determined the amount of compensation payable to the petitioner, this Court shall, by taking into account the evidence on record, determine the just and fair compensation payable to the petitioner.

8. Shri V.C.Patil holding for Shri Godsay, learned Counsel, has resisted the contentions raised on behalf of the appellant claimant. Learned Counsel submitted that it was the case of the appellant claimant himself that the accident in question happened because the brakes of the tractor failed. Learned Counsel invited my attention to the relevant averment in the claim petition. Learned Counsel submitted that not only in the claim petition but in his evidence before the Court also, the appellant claimant, without any reservation, admitted that the accident in question happened because the brakes of the tractor failed. In the circumstances, according to the learned Counsel, no error has been committed by the Tribunal in arriving at the conclusion that the claimant has failed in

proving that the accident in question happened because of the negligence of the driver of the offending tractor and has, therefore, rightly dismissed the claim petition.

9. In so far as the other submission made on behalf of the appellant that this Court shall determine the amount of compensation, the learned Counsel submitted that no evidence has been, in fact, adduced by the appellant claimant before the Tribunal in order to prove the injuries caused to him as well as the disability incurred by him out of the said injuries. Learned Counsel pointed out that disability certificate has not been submitted by the appellant before the Tribunal. In such circumstances, according to learned Counsel, it may not be possible for this Court to determine the amount of compensation.

10. I have considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and more particularly the discussion made by the Tribunal on point no.2. Learned Tribunal has recorded a finding that the appellant claimant failed in proving the negligence on the part of the driver of the offending tractor merely on an averment in the

claim petition that the brakes of the tractor failed. I have carefully perused the written statement filed by the owner of the offending tractor before the Tribunal. In his written statement, the owner has not even whispered that the accident in question happened because the brakes of the tractor failed. There is no other evidence on record to show that the alleged accident happened because the brakes of the tractor failed. The finding recorded by the Tribunal could have been sustained had it been the fact that the tractor was inspected by a mechanic or expert and he has opined that the brakes of the said tractor had failed and that was the cause for occurrence of the accident. Merely because the appellant claimant, who was a labour on the said tractor at the relevant time, has stated in his claim petition that the brakes of the tractor failed, no such conclusion can be arrived at in absence of any expert evidence or a vehicle examination and inspection report from the competent authority that the accident had happened because the brakes of the tractor failed. I reiterate that this was not even the case pleaded by the owner of the offending tractor that the brakes of the tractor failed and, as such, no blame can be attributed on the part of the driver of the offending tractor in occurrence of the alleged accident. It cannot be ignored that the appellant had alleged that the

driver of the offending truck was rashly and negligently driving the tractor at the relevant time.

11. In the case of **Minu B.Mehta and another (cited supra)**, the Honourable Apex Court has held that the burden of proving that the accident was due to mechanical defect is on the owner and it is his duty to show that he had taken all reasonable care and that despite such care, the defect remained hidden. In the instant case, as I have earlier noted, the owner in his written statement filed in the matter has not even raised such plea that the accident happened due to mechanical defect. The owner has also not brought on record any evidence to show that the alleged accident happened because of some mechanical defect in the offending tractor. In absence of any evidence from the side of the owner of the offending tractor, the learned Tribunal has recorded a finding merely on the averment in the claim petition that the alleged accident happened because the brakes of the tractor failed.

12) In the above circumstances, the finding recorded by the Tribunal on the point of negligence has to be quashed and set aside and it is accordingly quashed and set aside.

13. Learned Tribunal has not recorded any finding in regard to the entitlement of the appellant claimant for receiving the compensation because of the injury caused to him in the alleged accident. It appears that, in view of the finding recorded by the Tribunal that the appellant claimant had failed in proving the negligence on the part of the Driver of the tractor in occurrence of the alleged accident, he did not find it necessary to record finding on the other issues. Though the learned Counsel for the appellant claimant has prayed for determination of the amount of compensation by this Court, the said course may not be appropriate as well as advisable. It appears that the appellant claimant had not placed on record before the Tribunal the certificate of disability incurred by him. Now, the claimant has secured such certificate and was intending to file the same before this Court. This Court, vide its order dated 16th February, 2016, had advised the appellant to produce disability certificate preferably issued by the Government hospital. Accordingly, the appellant has obtained such certificate. However, the same will have to be proved by him and for that purpose, he may also be required to adduce the evidence of the concerned Medical Officer so as to prove the permanent disability incurred by him and its consequences. In the circumstances, it appears to me that it

would be in the fitness of things to remit the matter back to the Tribunal for recording the findings on all the aspects and more particularly as about the injuries sustained by the appellant claimant and the permanent disability incurred by him and accordingly to determine the amount of compensation. The Tribunal will also have to record a finding afresh on the issue of negligence in view of the fact that the earlier finding recorded by it has been quashed by this Court. The appellant claimant is permitted to place on record the permanent disability certificate obtained by him from the Medical Board before the learned Tribunal. It would be also open for the appellant claimant to adduce necessary evidence in that regard. It need not be stated that in case any such evidence is adduced, the respondent will have an opportunity to cross examine the witnesses which may be examined by the appellant claimant and to adduce the evidence in rebuttal of the same, if so required.

In view of the above, following order is passed:

ORDER

1. The findings recorded by the Tribunal on issue No.2 in MACP No.348/1996 is quashed and set aside. Consequently, the order dismissing the claim petition also stands quashed and set aside.

2. The matter is remitted back to the Tribunal for deciding it afresh. The appellant shall be permitted by the Tribunal to file on record the permanent disability certificate obtained by him from the Medical Board and to adduce the necessary evidence in that regard. Needless to state that the respondents shall be given an opportunity to cross examine the witnesses, if examined by the claimant, and also to adduce evidence from their side, if so required.

3. The Tribunal shall complete the hearing and decide the claim petition as expeditiously as possible keeping in mind that the accident in question had happened in the year 1996. It would be preferable if the Tribunal decides the claim petition within six months after the record is received to it from this Court.

4. The parties to the present appeal are directed to appear before the Tribunal on 8th of June, 2016.

5. The First Appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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