

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

**FIRST APPEAL NO. 2830 OF 2015
WITH
CA/4704/2015 IN FA/2830/2015**

The reliance General Insurance Company,
570, Rectifier House, Nigam Cross Road,
Near Royal Industrial Estate, Wadala (W),
Mumbai – 400 031.

Through It's Managar/Authorized Signatory,
C-9-10, 2nd Floor,
Aurangabad Business Center,
Adalat Road, Aurangabad,

... Appellant
(Orig. Resp. No.3)

Versus

- 1) Jitendra S/o Ramesh Badgujar,
Age : 30 years, Occu: Nil,
R/o. At Post Kapadane,
Taluka and District Dhule.
- 2) Prakash S/o Bhaidas Borse,
Age : Major, Occu: Driver,
R/o. Bhadne, Taluka Shindkheda,
District Dhule.
- 3) Ravindra S/o. Krushnaji Aghav,
Age : Major, Occu. Business,
R/o. House No.65, Galli No.1,
June Dhule,
Taluka & District Dhule.

... Respondents

(Rspdt. No.1-Org. Claimant
Rspdt. No.2 & 3-Org. Rspdt. No.1 & 2)

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Advocate for Appellant : Mr S G Chapalgaonkar
Advocate for Respondents : Mr. C.V. Bhadane

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CORAM : V.K. JADHAV, J.
Dated: June 08, 2016
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ORAL JUDGMENT :-

1. With the consent of learned counsel for parties, heard finally.

2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule dated 14.11.2014 in MACP No.705/2012 the original respondent no.3 Insurer has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows :-

a]. On 28.1.2012 respondent/original claimant was travelling in a tempo bearing registration no. MH-18/AA-2373 alongwith his goods i.e. vegetables for selling the same in the market at Shahada. On way, within the limits of village Dhondaicha, another vehicle i.e. tempo trax bearing registration no. MH-18/E-8818 gave dash to the tempo in which respondent/original claimant was travelling. In consequence of which, he had sustained

injuries on various parts of his body which resulted into permanent disablement as alleged. Thus, the respondent/original claimant filed claim petition before the Motor Accident Claims Tribunal, Dhule for grant of compensation under various heads.

b]. The matter was proceeded ex-parte against respondents no.1 and 2, however, the appellant/original respondent no.3 has strongly resisted the claim petition by filing written statement. It has contended that the driver of the vehicle involved in the accident was not holding valid and effective driving licence at the time of accident. The learned Member of the Tribunal, by its impugned judgment and award dated 14.11.2014, allowed the claim petition and thereby directed respondents no.1 to 3 jointly and severally to pay compensation amount of Rs.7,01,489/- including the amount under No Fault Liability to the respondent/original claimant alongwith interest. Being aggrieved by the same, the original respondent no.3- Insurer has preferred this appeal to the extent of quantum.

4. Learned counsel for the appellant-insurer submits that, the original claimant was treated by Dr. Patil and PW 2-Dr Patil has admitted in his cross examination that the operation of the respondent original claimant has been successful and fracture caused to him may be united within 3-4 months. He had come for follow up treatment continuously for three months and accordingly fracture injuries have been united. Learned counsel submits that, respondent-original claimant has examined Dr Patil mainly on the point of the medical expenses. Respondent/original claimant has produced on record permanent disablement certificate issued by the medical board of the Government Hospital, Dhule. However respondent/original claimant has not proved said permanent disablement certificate by examining the Medical Officer who has signed the said certificate. Learned counsel submits that the appellant-insurer has also disputed the genuineness of the said certificate. Learned counsel submits that, even though, alleged permanent disablement certificate is not duly proved before the Tribunal, the learned Member of the Tribunal has referred said certificate in the judgment and

without any expert's opinion, in this regard made observations that permanent disablement as mentioned in the said certificate affects earning capacity of the respondent/original claimant to the extent of 50%. Learned counsel submits that there is no basis for such observation and the Tribunal has thus awarded exorbitant amount of compensation.

5. Learned counsel for respondent/original claimant submits that, the claimant has examined Dr. Lalit Patil as PW 2 and he has given all the details of the injuries sustained by the claimants. The certificate giving details of the injuries issued by Dr. Patil is marked as Exh.76. Furthermore, discharge cards are also produced on record and same are marked as Exh.77 and 78, respectively. Learned counsel submits that, the claimant has produced on record permanent disablement certificate in form comp 'B' issued by the Medical Board of the Government Hospital and considering the same, the Tribunal has rightly exhibited the said permanent disablement certificate and accordingly assessed the compensation.

6. Learned counsel submits that, the injuries sustained by the claimant resulted into permanent disablement to the extent of 50% as mentioned in the said certificate and since the permanent disablement sustained by the claimant affected his earning capacity, learned Member of the Tribunal has rightly assessed the quantum of the compensation. Learned counsel submits that, so far as medical expenses incurred by the claimant are concerned, the Tribunal has rightly awarded the compensation. Learned counsel in the alternate submits that, the claimant may be given an opportunity to prove said certificate Exh. 29 issued by the Medical Board of Civil Hospital, Dhule by remanding the matter to the Tribunal.

7. It appears from paragraph no.12 of the Judgment that, the learned Judge of the Tribunal has considered the medical certificate issued by PW 2 Dr Patil, marked at Exh.76 and admissions given by him in cross examination, however, further expressed opinion that, the claimant has sustained 50% loss in his earning capacity as a result of such permanent disability caused

to him in the accident. It further appears from the observations in paragraph no.12 of the impugned judgment that, the Tribunal has considered the permanent disablement certificate Exh.29 issued by the Civil Surgeon and one another Member of the panel on the ground that said certificate has been issued by them while discharging their official duties and further observed that said certificate cannot be thrown away only on account of non examination of said medical officer.

8. In a case of **Rajkumar Vs Ajay Kumar and another**, reported in **2011(2) Mh.L.J. 569**, in paragraph no.11 and 12 of the order, 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 a 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 give 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 no 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.”

9. 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 should therefore take an active role to ascertain true and correct position so that it can assess 'just compensation'. It is also observed that, tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured.

10. In the case in hand, even though PW 2 Dr Patil has admitted in his cross examination that, the injuries sustained by the claimant have been united, tribunal has considered permanent disability certificate Exh.29

issued by the medical board of Civil Hospital, Dhule. Furthermore, in absence of any expert evidence in this regard, Tribunal has formed an opinion that, percentage of permanent disablement as specified in the said certificate Exh. 29 and nature of the permanent disablement as specified, affected earning capacity of the claimant to the extent of 50%. Even though fracture injuries are united in some cases, deformity may remain in the nature of shortening of leg, restriction of the movements, loss of the power of joints to some extent, however, same is not possible to be considered unless and until the expert is examined in this regard. Even though, claimant failed to examine the author of the certificate Exh.29, the Tribunal should have taken care to call the author of the said certificate to satisfy itself about the nature of the permanent disablement sustained by the claimant and its remote consequences in future for arriving at a just and reasonable compensation.

11. In view of the above discussion and in view of the facts and circumstances of the present case, in my

considered opinion, this is a fit case to be remanded to the Tribunal to the extent of examination of author of the certificate Exh.29. Needless to say that, the appellant-insurer, owner and driver, if any, are at liberty to cross examine the said witness.

12. In the light of the above discussion, and more particularly, in view of the observations made by the Apex Court in case of ***Rajkumar*** (supra), I proceed to pass the following order.

ORDER

- I. The appeal is hereby partly allowed.
- II. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule dated 14.11.2014, in MACP No.705 of 2012 is hereby quashed and set aside.
- III. Matter is remanded to the Tribunal with the following directions :-
 - a] Re-admit MACP No.705 of 2012 (Jitendra Ramesh Badgujar Vs. Prakash Bhaidas Borse) to its original number and proceed to decide the same.

- b] The evidence (if any) recorded during the course of the original trial, would be subject to all just exceptions, be evidence during the trial of claim petition after remand.
- c] The claimant is permitted to examine the Doctor to prove the contents of certificate in form 'Comp'.**'B'** Exh.29 and the respondents/owner, driver and appellant/insurer are at liberty to cross examine the said witness.

IV. Matter is remanded to the extent of examination of said witness as directed above.

V. Learned Member of the Tribunal shall decide the MACP No.705 of 2012 afresh, after giving an opportunity of hearing to both the sides, on its own merits, in accordance with law.

VI. Needless to add that the observation made by this court while disposing of the present appeal would not cause any prejudice to the trial of MACP 705/2012 after remand.

VII. The amount deposited by the appellant insurer before this court be transferred to the Motor Accident Claims Tribunal, Dhule and the

Tribunal may take an appropriate decision in respect of the same after deciding the matter on its own merits.

VIII. Record and proceeding be sent to the tribunal forthwith.

IX. The appellant and respondent/original owner shall appeal before the Tribunal on **30.6.2016**.

X. The Tribunal shall dispose of the matter within three months (03) after receipt of the record and proceedings to it.

XI. Appeal is accordingly disposed of. CA also stands disposed of.

sd/-

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

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