

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2211 OF 2015

Malhari Bajirao Dhande
Age 67 years, Occ. Agriculturist,
R/o. Dhandewadi, Tq. Karjat,
District Ahmednagar
through his Power of Attorney holder
Shri Baliram Pralhad Dhande
Age 29 years, Occ. Agriculturist,
R/o. Dhandewadi, Tq. Karjat
District Ahmednagar.

...Appellant
(Ori. Applicant)

Versus

1. Ramhari Suresh Kadam,
Age 47 years, Occ. Agriculturist,
R/o. Baradgaon Dagdi, Tq. Karjat
District Ahmednagar.

2. The Manager,
Royal Sundaram Allianz Insurance Col Ltd.,
Sundaram Tower, 45/46,
Whites Road, Chennai 600 002.

... Respondents
(Ori.Non-applicants)

.....
Advocate for Appellants : Mr. Nimbalkar Aniruddha A
Advocate for Respondent No. 2 : Mr. Avinash S. Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 9th JUNE, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 28.04.2015 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No. 213 of 2013, the original claimant has preferred this appeal.

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

a. On 19.09.2012 at about 5.00 p.m. when the claimant was cleaning the area in front of his house at village Dhandewadi, Taluka Karjat, at that time one tractor bearing registration No. MH-16-AM-6796 was standing there. The said tractor is owned by opponent No.1 Ramhari Suresh Kadam. At the relevant time, driver of the said tractor had started taking the said tractor in reverse direction. The driver of the tractor, while taking said tractor in reverse direction, was required to take due care and precaution. However, the said tractor gave dash to the appellant-claimant when he was cleaning the area in front of his house. In consequence of which, the appellant-claimant had sustained grievous injuries on neck Lt., Lt. Femur. The injuries sustained by him also resulted in permanent disablement to the extent of 40% and now he is unable to perform his day to day activities. He was hospitalized for a considerable period and had undergone surgery on his left knee in the hospital. He had to incur expenses for medical treatment, purchase of medicine etc. Furthermore, as a result of permanent disablement sustained by him, the appellant/claimant cannot stand, walk, sit properly and he is almost bed ridden. Furthermore, he is not able to do agriculture work. Thus, the claimant preferred claim petition before the Motor

Accident Claims Tribunal, Ahmednagar bearing M.A.C.P. No. 213 of 2013 for grant of compensation under various heads.

b. The respondent-owner has resisted the said claim petition by filing his written statement at Exh.22. It is contended that driver of the tractor was taking the tractor in reverse direction in slow speed at the relevant time and the appellant-claimant, all of a sudden, came on the backside of the tractor. Thus, the driver of the tractor was not at fault. It is also denied that the injuries sustained by the claimant resulted into permanent disablement.

c. Respondent No.2 insurer has also strongly resisted the claim petition by filing written statement Exh.17. It is denied that the appellant-claimant has become permanently disabled on account of injuries sustained by him in the alleged accident. It is also contended that the complaint was file belatedly and crime was registered in the concerned police station in collusion with the police authorities and respondent No.1-owner. Respondent No.2-insurer has denied involvement of vehicle in the alleged accident.

d. Learned Member of M.A.C.T., Ahmednagar, by its impugned judgment and award dated 28.4.2015, dismissed the claim petition. Hence, this appeal.

3. Learned counsel for the appellant submits that in the F.I.R., name of owner of the tractor is mentioned. The said tractor was purchased recently, prior to accident and therefore, registration number was not mentioned on the tractor on the date of accident. However, in the F.I.R. name of owner is clearly mentioned and manner in which accident took place is also mentioned. On the basis of complaint lodged with concerned police station, crime No. 212 of 2012 came to be registered in Karjat police station against driver of the tractor. Respondent No.1-owner has not denied the happening of accident, however, has denied the rash and negligent driving of the tractor by its driver in reverse direction. It is simply contended in the written statement filed by respondent No.1 that the appellant-claimant, all of a sudden came behind the tractor when it was being taken in reverse direction and thus, driver of the tractor was not at fault. On 19.09.2012 itself, the appellant/claimant was taken to Sai Hospital at Karjat. He came to be examined on the same day at about 7.00 p.m. The said injury certificate is placed on record and marked Exh.30 The history of giving dash by the tractor is clearly mentioned in the said injury certificate. Learned Member of the Tribunal has erroneously observed and held the story narrated in F.I.R. and the contents of spot panchnama are suspicious in nature. Registration certificate of tractor shows that it was purchased in the month of April 2012, however, as to why the registration number was

not displayed on the tractor is a matter within the knowledge of respondent No.1-owner. The tribunal has given unnecessary weightage to this aspect and arrived at the erroneous conclusion that possibility of false involvement of tractor in the accident in collusion with the owner and the police authorities cannot be ruled out. There is satisfactory evidence placed on record to show that the appellant-claimant has sustained injuries out of use of tractor and the injury sustained by him resulted into permanent disablement. The appellant-claimant is entitled for compensation on account of loss of future income, for medical expenses, conveyance charges, pains and sufferings, future medical treatment, etc.

4. Learned counsel for the respondent-insurer submits that there is no explanation given for lodging of complaint belatedly. Even though accident had taken place on 19.09.2012, the complaint came to be lodged on 23.09.2012 without any explanation. The distance between the house of complainant and the police station is very short. Even though registration number of vehicle-tractor is not mentioned in the F.I.R., on the same day, spot panchnama was drawn by the police after registration of crime wherein registration number of the tractor is clearly mentioned. Age of the appellant-claimant, though shown as 65 years in the title cause of claim petition, however, in the medical certificate, his age is shown in

between 80 to 85 years. The appellant claimant is not likely to carry out day to day operations in agriculture land and at the most supervisory charges can be considered in case of death claim when agriculture is the main source of income. In the case in hand, the appellant-claimant can supervise the agriculture operations and there is no loss in income as such. Learned counsel submits that in absence of expert's opinion about future medical expenses, no compensation can be awarded under the said head. Learned counsel submits that considering all these aspects the Tribunal has rightly dismissed the claim petition.

5. On careful perusal of complaint Exh.28 and spot panchnama at Exh.29, it appears that in the F.I.R., name of owner of the tractor and make of the tractor is clearly mentioned. It appears from the contents of F.I.R. that the accident had taken place on 19.09.2012 at about 5.00 p.m. It is specifically mentioned in the complaint that the appellant/claimant was cleaning the front portion of his house at the time of accident, and at the time, one tractor, without displaying registration number, of Swaraj Company owned by Ramhari Suresh Kadam was coming in the reverse direction. It is alleged in the complaint that driver of the said tractor took the said tractor in reverse direction in speed and gave dash to the appellant-claimant while he was cleaning front portion of his house. On perusal of injury

certificate Exh.30, it appears that on 19.09.2012 at about 7.00 p.m. appellant-claimant Malhari was examined by Dr. Sandeep Kaldate in Sai Hospital at Karjat. The said hospital is private hospital and the history is recorded in the injury certificate itself. The history is recorded that "due to dash given by a heavy object and patient fall down (tractor with vator)". The claimant has examined Dr. Mahesh Madhavrao Mulay, an Orthopedist attached to Bhagirathi Hospital, Ahmednagar. He has deposed that the appellant/claimant was referred to him by Sai Hospital, Karjat, where he was admitted till 25.09.2012. It is further deposed by witness No.2-Dr. Mahesh Mulay that he had performed surgery on left knee joint of the appellant/claimant and further explained that the appellant/claimant had sustained permanent disablement to the extent of 40%.

6. Even though the accident had taken place on 19.09.2012, it appears from the evidence of Dr. Mahesh Mulay that the appellant/claimant was remained as indoor patient in Sai Hospital, Karjat till 25.09.2012 and thereafter shifted to Bhagirathi Hospital, Ahmednagar where he was operated to his left knee joint. In the backdrop of this evidence, I do not find that delay in lodging complaint is not explained. The appellant-claimant was not in a position to approach the police station for lodging the complaint. His grandson had accordingly lodged the complaint on 23.09.2012 with

the concerned police station and accordingly, crime came to be registered. Spot panchnama was drawn on the same day i.e. on 23.9.2012 and registration number found displayed on the tractor. Thus, possibility cannot be ruled out that anticipating the complaint, the owner displayed the registration number on tractor as the passing of the vehicle-tractor by R.T.O. took place long back. Even assuming that there is delay in lodging the complaint, I am of the firm opinion that same is reasonably explained by the appellant/claimant. It also appears that the Tribunal has given unnecessary weightage to the fact that the registration number of tractor was not displayed on the tractor at the time of accident. In fact, name of owner is mentioned in the F.I.R. and accordingly crime came to be registered against the driver of the tractor. Furthermore, the owner of tractor has not denied the accident.

7. Learned Member of the Tribunal has neither considered the history recorded in injury certificate, nor considered the owner's name which is clearly mentioned in the F.I.R. The claimant has proved that he has sustained injuries due to the dash of tractor bearing No.MH-16/AM-6796 on account of rash and negligent driving of driver of the said tractor, which resulted into permanent disablement. The Tractor driver should have taken due care while taking the tractor in reverse direction. It is very easy for the tractor

driver to look at the backside while taking tractor in reverse direction. From the evidence on record, only irresistible inference could be drawn that the driver of the tractor was rash and negligent while taking the tractor in reverse direction at the time of accident and he alone is responsible for the accident. Further, respondent No.1 has not examined driver of the tractor to substantiate his contentions/pleadings. By any stretch of imagination, it cannot be inferred that the appellant-claimant was responsible for the accident when he was cleaning the front portion of his house.

8. Since the Tribunal has dismissed the claim of the appellant/claimant, the quantum is not discussed and considered. Though the age of claimant is shown as 65 years at the time of accident, however, in the injury certificate, his age is shown in between 80 to 85 years. It is difficult to believe that in such old age the appellant claimant was personally cultivating his agriculture land. At the most, it can be said that he was supervising the agriculture activities by using his experience and skill. However, the same is also possible now and there cannot be any future loss in agriculture income.

9. The appellant/claimant has sustained injuries on his hip joint and in his old age, it is difficult for him to carry out his day to day

activities in the same manner as prior to accident. Dr. Mahesh Mulay, P.W.2 has issued medical certificate in form COMP "B" and the same is marked Exh.39. He has opined that appellant claimant has sustained physical disability in the form of destruction or permanent impairing of the power of his hip joint to the extent of 40%.

10. In view of the above, the claimant is entitled for lump sum amount of compensation for the injury sustained by him in the accident, which resulted into permanent disablement. Thus, the claimant is entitled for Rs.50,000/- lump sum compensation on account of permanent disablement sustained by him to the extent of 40%. The witness No.2-Dr. Mahesh Mulay has deposed that he has issued medical bills for treatment given to the appellant/claimant and the bills/receipts are marked at Exh.36, 37 and 38 respectively. Furthermore, there are printed medical bills showing that the appellant-claimant had purchased the medicines from medical stores at Karjat as prescribed to him by Dr. Sandeep Kaldate, attached to Shri Sai Hospital at Karjat. The said bills of purchase of medicine are about Rs.40,000/-. In view of this, the claimant is entitled for the amount of Rs.40,000/- towards medical expenses. The grandson of the appellant/claimant, who is power of attorney, has deposed that on account of permanent disablement sustained by his grandfather,

the claimant i.e. grandfather is not able to do the routine work and he is almost bedridden and one attendant is required for his routine work. As deposed by witness No.2 Dr. Mahesh Mulay, the appellant/claimant was operated in Bhagirathi Hospital at Ahmednagar on his left hip joint. In view of this, the appellant-claimant is entitled for amount of Rs.25,000/- towards pains and sufferings. Furthermore, the appellant-claimant is entitled for amount of Rs.10,000/- for loss of amenities in future life and also for amount of Rs.5,000/- towards conveyance charges since he was shifted to Bhagirathi hospital, Ahmednagar during the course of treatment. Learned counsel for the respondent-insurer has rightly pointed out that in absence of any expert's opinion, no amount of compensation can be awarded towards future medical treatment.

11. In view of the above discussion, the break-up of compensation which can be broadly categorized is as under :-

i)	Lump-sum compensation on account permanent disablement sustained by the appellant-claimant.	Rs. 50,000.00
ii)	Medical expenses	Rs. 40,000.00
iii)	Pains and sufferings	Rs. 25,000.00
iv)	Loss of amenities in future life	Rs. 10,000.00
v)	Conveyance charges	Rs. 5,000.00

Total		Rs.1,30,000.00

12. Thus, the appellant/claimant is entitled for Rs.1,30,000/- (Rupees One lac thirty thousand only) and the respondents are jointly and severally liable to pay the same. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed and disposed of.
- II. The judgment and award dated 28.04.2015 passed by the learned Member, M.A.C.T. Ahmednagar in M.A.C.P. No.213 of 2013 is hereby quashed and set aside.
- III. The M.A.C.P. No.213 of 2013 (Malhari Bajirao Dhande vs. Ramhari Suersh Kadam and another) is hereby partly allowed with proportionate costs and the respondents are jointly and severally liable to pay an amount of Rs.1,30,000/- (Rupees One Lac Thirty Thousand only) inclusive of N.F.L. Amount already awarded and paid to the claimant, with interest @ 9% p.a. from the date of application till realization of entire amount.
- IV. Award be drawn up accordingly.

(V. K. JADHAV, J.)