

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.618 OF 2002

Mahesh s/o Ramesh Mohadkar
Age: 26 Yrs., occu. Cleaner,
R/o Pravaranagar, Tq.Shrirampur,
District Ahmednagar. = **APPELLANT**

VERSUS

- 1) Smt.Sindhubai Babasaheb Tambe,
Age: Major, occ. Business,
R/o Dadh (Bk.), Tq.Shrirampur,
District Ahmednagar.
- 2) The Branch Manager,
The New India Assurance Co.Ltd.
Sawata Chauk, Sangamner,
Dist.Ahmednagar. = **RESPONDENTS**
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Mr.Aashutosh Kulkarni, Adv.h/for Mr.V. J. Dixit,
Sr.Counsel for Appellants;

Mr.S. G. Chapalgaonkar, Adv. for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 8th June, 2017.

ORAL JUDGMENT:

- 1) Heard Shri Aashutosh Kulkarni, learned Counsel for the appellant and Shri SG Chapalgaonkar, learned Counsel appearing for Respondent No.2-insurance company.

2) The present appeal is directed against Judgment and Award dated 21st June 2001 passed by Chairman, Motor Accident Claims Tribunal, at Ahmednagar (for short, the Tribunal) in MACP No. 507/1995.

3) The present appellant had filed the aforesaid claim petition claiming compensation on account of the injuries sustained to him in a vehicular accident happened on 23rd January, 1995 having involvement of two trucks bearing registration No.MWA-6633 and No.MWA 7543. The appellant was admittedly a cleaner employed on a truck bearing registration No.MWA-6633 and was travelling at the time of the accident through the said truck.

4) Shri Ashutosh Kulkarni, learned Counsel appearing for the appellant assailed the impugned judgment on three grounds. First that the Tribunal has erred in awarding only 75% of the total amount payable to the appellant on the

ground that the negligence on the part of the driver of the truck, owner and insurer of which were party to the claim petition, was only to the extent of 75%. Second that that the Tribunal has applied the wrong multiplier while determining the amount of compensation and the third that the compensation awarded by the Tribunal towards non-pecuniary damages is unjust and inadequate.

5) In so far as the first objection is concerned, Shri Chapalgaonkar, the learned Counsel appearing for the Insurance Company fairly submitted that in view of the settled legal position and the law laid down by the Hon'ble Apex Court in the case of Khenyei Vs. New India Assurance Co.Ltd. – 2016 (2) Mh.L.J. 514 the appellant needs to be awarded total compensation from the owner and insurer which are party to the present proceedings. Shri Chapalgaonkar further submitted that the objection raised as about the multiplier also deserves to be considered and appropriate

multiplier would be of 18 as has been submitted by the learned Counsel for the appellant. As about the objection in regard to the award of non-pecuniary damages, the learned Counsel submitted that the Tribunal in its discretion has awarded the reasonable amount of compensation and no interference is, therefore, required in the amount of compensation so awarded by the Tribunal under the said head.

6) It is undisputed that the alleged accident wherein appellant was injured had occurred as a result of composite negligence on part of the drivers of both the vehicles involved in the said accident. Admittedly, the appellant filed the claim petition and claimed the compensation only against the owner and insurer of the truck bearing registration No. MWA6633.

7) The perusal of the impugned judgment, shows that the Tribunal, while recoding the finding on the issue of negligence has held that

the alleged accident happened because of the composite negligence of the drivers of the trucks bearing No. MWA-6633 and MWA-7543. In view of the finding recorded by the Tribunal as above, the Tribunal must have awarded the entire amount of compensation determined by it from the owner and insurer of the truck bearing No. MWA-6633 who were the respondents in the claim petition before the said Tribunal. The Tribunal has however, made the owner and insurer of the truck bearing registration No. MWA-6633 liable to pay the 75% of the total amount of compensation observing that the negligence on the part of the driver of the said truck was held by it to the extent of 75%. The Tribunal thus, has deprived the appellant from 25% of the payable compensation for the reason that he did not make party to the driver, owner and insurer of the another truck involved in the alleged accident.

8) It was the contention of the learned counsel for the appellant, which has been

conceded by the learned Counsel for the Insurance Company that the Tribunal must have awarded the entire amount of compensation jointly and severally from the owner and insurer of the truck bearing No. MWA-6633 who were party to the claim petition, since it was the case of composite negligence. In order to support his contention the learned Counsel relied upon the judgment of Hon'ble Apex Court in the case of Khenyei Vs. New India Assurance Co.Ltd. – 2016 (2) Mh.L.J. 514. The Hon'ble Apex Court in the judgment cited supra has held that in a case of accident caused by negligence of joint tortfeasors, all the persons who aid or counsel or direct or joint in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tortfeasors in such a case is immaterial for satisfaction of the claim of the claimant and need not be determined by the Court. The Hon'ble Apex Court has further held that the liability of each and every joint tortfeasor vis-

a-vis to the claimant cannot be bifurcated as it is joint joint and several liability. In the case of composite negligence, apportionment of compensation between tortfeasors for making payment to the claimant is not permissible as the claimant has the right to recover the entire amount from the solvent defendant.

9) In view of the law laid down as above, the Tribunal must have made payable the entire amount of compensation from the owner and insurer of the truck which were party to the petition before it. The Tribunal has grossly erred in awarding only 75% of the total compensation from the owner and insurer of the truck bearing MWA-6633. The error committed by the Tribunal needs to be rectified by holding the owner and insurer of the truck bearing No. MWA-6633 liable to pay the entire amount of compensation which may be found payable to the appellant / claimant.

10) The Tribunal has applied the multiplier

of 17 while determining the amount of compensation payable to the appellant. Having regard to the age of claimant, the Tribunal must have adopted the multiplier of 18 for determining the amount of compensation. Further there is substance in the objection raised by the appellant that the amount of compensation awarded by the Tribunal towards non-pecuniary damages is inadequate and the same needs to be adequately enhanced.

11) As held by the Tribunal the annual loss of income of the claimant was Rs.3,600/-. The Tribunal has therefore, determined the amount of compensation by applying the multiplier of 17 to the said amount. Having regard to the age of the claimant, the appropriate multiplier would have been of 18. By applying the multiplier of 17 the amount of compensation is quantified by the Tribunal to Rs.61,200/-. By applying the multiplier of 18, it comes to Rs.64,800/-. Under the head of future loss of income, I hold the

claimant entitle for the said amount of Rs.64,800/-.

12) The Tribunal has awarded a sum of Rs.12,175/- towards medical expenses and Rs.5,000/- towards the pain and suffering and loss of amenities in the life. The amount of compensation awarded towards medical expenses does not require any interference since the same is awarded as per the medical bills produced on record by the appellant. The amount of Rs.5,000/- as has been awarded by the Tribunal towards pain and suffering, however, apparently appears unjust and inadequate. The same needs to be adequately enhanced. I deem it appropriate to enhance the said amount by Rs.10,000/-. The claimant is, thus, found entitled to the total compensation of Rs.64,800/- + Rs.12,175/- + Rs.15,000/- i.e. Rs.91,975/-. In the facts and circumstances of the case, it appears to me that this will be the just and fair compensation payable to the appellant / claimant.

13) For reasons stated above, the following order is passed.

ORDER

1. The appellant / claimant is held entitled for the compensation of Rs.91,975/- (Rs. Ninety one thousand nine hundred seventy five only) together with the interest thereon at the rate of 9% p.a. from the date of application till its realization, jointly and severally from the respondent Nos.1 & 2 herein.

2. The appeal is, thus, partly allowed in the aforesaid terms with proportionate costs.

**(P . R . B O R A)
JUDGE**

vsm/