

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

2 FIRST APPEAL NO. 2388 OF 2013

SANJAY BANDEAPPA KASTURE
VERSUS
ISMAIL MAMAHADSAB SHAIKH AND OTHERS

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Advocate for Appellants : Mr. V. M. Mane.

Advocate for Respondent No.3 : Mr. M. M. Ambhore.

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CORAM : **V. K. JADHAV, J.**

DATE : 04th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Udgir dated 10th May, 2013 in MACP No.71 of 2009, the original Claimant has preferred this appeal to the extent of finding recorded by the Tribunal about the contributory negligence on the part of the Claimant to the extent of 75% and 25% on the part of the driver of the truck.

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

- i) On 5th August, 2008 at 09:00 pm, the Claimant alongwith his friend was going to Udgir from Latur in an Alto Car bearing registration No.MH-24/C-6619.

On way, within the limit of village Karadkhel, one truck bearing registration No.KA-39-1217 was proceeding ahead of the car. The car was behind the truck by keeping the moderate distance. The driver of the truck all of a sudden applied the brakes of the truck and stopped the truck at the middle portion of the road. In consequence of which, the car of the Claimant gave dash to the truck from its backside. The Claimant and other occupants of the car sustained grievous injuries. The Claimant has incurred huge medical expenses. His earning capacity came to be affected due to the permanent disablement sustained by him. The Claimant has therefore, approached the Motor Accident Claims Tribunal for grant of compensation under the various heads.

- ii) Respondent Nos.1 and 2 failed to appear before the Tribunal and therefore, hearing of the claim petition ordered to proceed *ex-parte* against them.
- iii) Respondent No.3 / Insurer has strongly resisted the

claim petition by filing the written statement. It has been contended that the Claimant was driving the car in high speed and in rash and negligent manner and gave a dash to the truck from backside.

- iv) The Claimant has adduced oral and documentary evidence in support of his contentions. Respondent / Insurer has not adduced any evidence.
- v) The learned Member of the Tribunal held that the Claimant has contributed the negligence to the extent of 75% and the driver of the said truck has contributed the negligence to the extent of 25% and accordingly directed the Respondents to pay jointly and severally an amount of Rs.1,24,660/- with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the entire amount. Hence, this appeal to the extent as stated above.

4 The learned counsel for the Appellant / original Claimant submits that the Claimant was driving the car at the relevant time and the said truck was proceeding ahead of his car. All of a sudden, the driver of the said truck had stopped his vehicle truck at the middle

portion of the road and thus, the car dashed against the back portion of the said truck. The learned counsel submits that the Claimant has deposed before the Tribunal that the tail lamps of the said truck were not operating at the time of accident. The accident had taken place at 09:00 pm. As per the contents of spot Panchanama Exhibit – 38, the Tribunal has observed that the truck was stopped at the left side of the road and therefore, the driver of the said truck had contributed the negligence to the extent of 25% only. The learned counsel submits that the observations of the Tribunal are perverse and ignoring the contents of the spot Panchanama, the Tribunal has made the aforesaid observations. Even in the map drawn on the spot Panchanama, the truck was shown at the middle portion of the road. The Respondents / owner and driver have failed to appeal before the Tribunal though duly served. The Respondent / Insurer has not examined any witness. The Tribunal has also erroneously observed that at the instance of one of the occupant of the car, the spot Panchanama Exhibit – 38 was drawn. These are the perverse observations. The spot of accident was shown by the occupants of the car and thereafter, the independent Panch witnesses have inspected the spot and the position of the vehicle and accordingly, drawn the spot Panchanama.

5 The learned counsel for Respondent / Insurer submits that the Claimant has driven the car in an excessive speed and in rash and negligent manner. The Claimant has not driven his vehicle car by keeping the safe distance from the truck. The said truck was not in speed and because of the excessive speed, the Claimant could not control his vehicle car and dashed against the back portion of the truck for which the driver of the truck was not responsible. The learned counsel submits that as per the map drawn on the spot Panchanama Exhibit – 38, the vehicle truck is shown at the left side of the road. The learned Member of the Tribunal has therefore, rightly held that the Claimant had contributed the negligence to the extent of 75% whereas the driver of the truck had contributed the negligence to the extent of 25%. No interference is required.

6 On perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Claimant, who sustained the injuries in the accident and who was driving the car at the time of accident, has deposed that the driver of the truck, which was proceeding ahead of the car, suddenly applied the brakes and stopped his vehicle truck at the middle portion of the road. Admittedly, the accident had taken place at 09:00 pm. The Claimant has also

deposed that the tail lamps of the vehicle truck were not operating at that time. On perusal of the contents of the spot Panchanama, it appears that there is no village or any commercial layout abutting the road at the spot of accident. Even in the Panchanama, there is no reference to the street lights. Under these circumstances, in absence of any tail lamps, it is difficult for the driver of small vehicle like car to take precautions if the vehicle like truck stops suddenly at the middle portion of the road. However, it also appears that the Claimant was also driving the car in a speed and therefore, he could not control his vehicle car.

7 On careful perusal of the spot Panchanama Exhibit – 38, I find that it has been specifically mentioned in the spot Panchanama that the truck was found at the middle portion of the road. There was no reason for the driver of the truck to stop his vehicle truck at the middle portion of the road in the night time. Even on perusal of the map drawn on the spot Panchanama Exhibit – 38, it appears that the truck is shown at the middle portion of the road. However, considering the damage caused to the car as mentioned in the spot Panchanama, it appears that the Claimant has also driven the car in a speed without keeping the safe distance from the truck, which was proceeding ahead of his car. However, the learned Member of the Tribunal has observed

erroneously against the contents of the spot Panchanama and the map drawn on it and held that the Claimant has contributed the negligence to the extent of 75% and the driver of the truck has contributed the negligence to the extent of 25%. Considering the evidence on record, most specifically the contents of the spot Panchanama Exhibit – 38 and the map drawn on it and the oral evidence of the Claimant, in my considered opinion, the Claimant and the driver of the said truck contributed the negligence to the extent of 50% each. I record the finding to that effect accordingly.

8 In view of the above, the Claimant is entitled for the compensation to the extent of 50% amounting to Rs.2,49,319/-. The impugned judgment and award requires modification to that extent. Hence, the following order:

ORDER

- I. The appeal, is hereby partly allowed with proportionate costs.
- II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Udgir dated 10th May, 2013 in MACP No.71 of 2009,

is hereby modified in the following manner:

“Respondent Nos.1 to 3 shall jointly and severally pay to the Claimant an amount of Rs.2,49,319/- (Rupees Two Lacs Forty-Nine Thousand Three-Hundred and Nineteen only) (inclusive of the amount paid, if any, under Section 140 of the Motor Vehicles Act) with interest @ 6% per annum from the date of presentation of the petition till its realization.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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