

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

FIRST APPEAL NO. 3230 OF 2015

NAGU BABU KEKAN
VERSUS
SURJEETSINGH BHATIYA TIRATHSINGH BHATIYA AND
ANOTHER

...

Advocate for Appellant : Mr N P Bangar
Advocate for Respondent 2 : Mr A B Gatne

...

CORAM : V.K. JADHAV, J.
Dated: June 14, 2017

...

PER COURT :-

1. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Beed dated 9.6.2015 in MACP No.192/2011, the original claimant has preferred this appeal.

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

a] On 21.3.2011, the claimant alongwith his wife had been to Kanchanwadi, situated on Paithan Aurangabad road. On reaching there, the appellant-claimant started to cross the road and at that time a truck bearing registration No.MH-18/M-5109 came from Paithan side

in high and excessive speed. Said truck had given dash to the claimant. In consequence of which, left leg of the claimant crushed under the wheels. The claimant was immediately shifted to Ghati Hospital, Aurangabad where he was treated initially and thereafter shifted to Rubi Hall, Pune for further treatment. Later on, his left leg above the knee was amputated. Thus, the appellant-claimant has approached the Tribunal, Beed by filing MACP No.192/2011 for grant of compensation under various heads. It has been contended in the claim petition that, the appellant-claimant has incurred huge medical expenses for the treatment and ultimately his left leg below knee came to be amputated. It has also been contended that the claimant was in service as a teacher in Central Primary School, Udand Wadgaon, Tq. and District Beed, on monthly salary and he was also cultivating his land personally situated at Khandala and due to amputation of the leg he has lost his earning capacity. He has also lost future prospects in his service. He is the only earning member of his family. The appellant-claimant has thus claimed compensation

of Rs.51.00 lacs.

b) Respondent no.1 owner though duly served, failed to appear before the Tribunal and therefore, hearing of the claim petition ordered to proceed ex parte against him.

c] Respondent No.2 insurer has strongly resisted the claim petition by filing written statement. Respondent No.2 insurer has denied the allegations about the negligence on the part of the driver of the truck. It has been contended that the appellant-claimant is responsible for the accident or in the alternate he is liable for contributory negligence.

d] Appellant-claimant has adduced oral and documentary evidence in support of his contentions, however, respondent-insurer has not adduced any evidence. Learned Member of the Tribunal, Beed has partly allowed the petition and thereby directed the respondent nos. 1 and 2 to pay compensation of Rs.2,27,400/- jointly and severally to the claimant

aaa/-

alongwith interest @ 7.5% p.a. The learned Member of the Tribunal has recorded finding to issue no.1 to the effect that the appellant claimant had contributed negligence to the extent of 70% and the driver of the truck contributed negligence to the extent of 30%. The appellant-claimant has thus preferred this appeal to the extent of said finding and also in respect of quantum of compensation as awarded by the tribunal.

3. Learned counsel for the appellant-claimant submits that, the appellant-claimant was a pedestrian and at the time of accident he was about to cross the Paithan Aurangabad road near Kanchanwadi. Learned counsel submits that, spot panchnama Exh.24 and map drawn on it points out that the accident had taken place on the extreme left side of the road in front of hospital of Dr. Barale. Learned counsel submits that, after going through the contents of spot panchnama, and it is also rather an admitted position that, so far as Paithan Aurangabad road passes through village Kanchanwadi is concerned, there is no controlled crossing as such.

Learned counsel submits that in terms of Regulation 11 of the Rules of the Road Regulations 1989, pedestrians have the right of way at uncontrolled pedestrian crossings. Learned counsel submits that, in the instant case, it has come on record that, the appellant-claimant has waived his hand giving signal thereby to the driver of the truck to wait till he crosses the road, but even then, the driver of the said truck had not stopped his vehicle and given dash to the claimant, who was standing on the extreme left side of the road. Learned Member of the Tribunal has recoded perverse finding by observing that it is for the pedestrian to look at both the sides first to ensure that there is no vehicle nearby him and he should wait till the road is safe for his crossing. The learned Member of the tribunal has gone to the extent by observing that it is not expected from the appellant-claimant to put himself in danger and surprise the driver of the approaching vehicle by taking sudden decision to cross the road, when it is unsafe for him. Learned counsel submits that, it is pertinent to note that, the Tribunal has made said observations

without there being any evidence on record to that effect. Respondent-insurer has neither raised a defence nor subjected the appellant-claimant to cross examination that it was his sudden decision to cross the road and owner of the truck and driver of the truck remained absent before the Tribunal. Respondent insurer has not taken pains to examine the driver of the truck. It has come in the evidence of the appellant-claimant that he noticed the truck coming towards him at the distance of 20 feet. Learned counsel submits that, the driver of the truck could have stopped his vehicle by noticing that pedestrian is trying to cross uncontrolled pedestrians crossing. Learned counsel submits that only inference can be drawn that driver of the truck had driven it in excessive speed and therefore he could not control his vehicle after noticing that a pedestrian was about to cross the road. Learned counsel submits that finding of the Tribunal is height of perversity to hold the appellant-claimant responsible for the accident to the extent of 70%.

4. Learned counsel submits that, so far as quantum of compensation is concerned, the learned Member of the Tribunal has not awarded any compensation separately for the permanent disablement in the form of amputation of left leg below knee. Court has awarded meager amount under pains and sufferings and loss of amenities in future life.

5. Learned counsel has placed his reliance in a case ***Neeruppam Mohan Mathur vs. New India Assurance Co. reported in AIR 2013 SC 3378*** and submits that the claimant is entitled for an amount of Rs.1.00 lac for pains and sufferings, Rs.2.00 lacs for loss of amenities in future life.

6. Learned counsel for respondent-insurer submits that the appellant-claimant even noticing the approaching vehicle tried to cross the road. It was unsafe for him. The appellant-claimant is a teacher by occupation and he was in a position to understand the consequences of his negligence. Even then, the

appellant-claimant waived his hand indicating thereby the driver of the vehicle to notice his crossing of the road and then tried to cross the road. Learned counsel submits that, the tribunal has therefore, rightly considered the negligence on the part of the appellant-claimant to the extent of 70%. Learned counsel submits that, so far as spot panchnama exh.24 is concerned, the same was drawn on the next day of the incident. It is therefore difficult to believe the contents of the spot panchnama, wherein the spot of the accident is shown as extreme left side of the road. Learned counsel submits that, the appellant-claimant's left leg below knee was amputated and the possibility of sustaining injury on the left leg could have been there only in the event the appellant-claimant would have crossed the entire road. So far as quantum of compensation is concerned, the learned counsel submits that, the learned Member of the Tribunal has awarded just and reasonable compensation. No interference is required in the quantum of compensation.

7. On perusal of the judgment and award passed by the Tribunal, it appears that, the learned Member of the Tribunal has recorded finding to issue no.1 which suffers from perversity. It is not disputed that, said Paithan-Aurangabad road is situated south-north in direction at the spot of accident. The accident had taken place within the limits of village Kanchanwadi and in front of hospital of Dr. Barale. Admittedly, in front of said hospital, there is uncontrolled pedestrians crossing.

8. As per the contents of the spot panchnama, exh.24, there is no signal and zebra crossing in front of hospital of Dr. Barale. In terms of provisions of Regulation 11 of the Rules of Road Regulation 1989, pedestrians have the right of way at uncontrolled pedestrian crossings. As per the contents of the spot panchnama exh.24, there is no foot path, nor any other track. The learned Member of the Tribunal, without any evidence in paragraph no.12 of the judgment has observed that, the appellant-claimant by taking a

sudden decision to cross the road, put himself in danger and surprise the driver of the approaching vehicle. In the same paragraph by referring the oral evidence of the appellant-claimant the learned Member of the Tribunal has also observed that, the appellant-claimant has tried to cross the road by waiving his hand. It does mean that the appellant-claimant has waived his hand and thereby given signal to the driver of the approaching vehicle of his intention to cross the said road. It was for the driver of the truck to control his vehicle and stop it till the appellant-claimant pedestrian crosses the uncontrolled pedestrian crossings. However, said truck had not only dashed to the appellant-claimant but his left leg crushed under the wheels of truck which subsequently resulted into amputation of his left leg below the knee. Only irresistible inference could be drawn that driver of the said truck had driven it in excessive speed and in rash and negligent manner and therefore, he could not control the speed and stop his vehicle. By any stretch of imagination, no inference can be drawn that the appellant-claimant himself is

responsible for the accident or that he had contributed the negligence to the extent as observed by the Tribunal. So far as spot panchnama exh.24 is concerned, it appears from the contents of the spot panchnama, that, though spot panchnama was drawn on next day, spot of accident was shown by the eye witness and accordingly same was shown in the map drawn on the spot panchnama. I accordingly, quash and set aside the findings recorded by the Tribunal to issue no.1 and record my finding in the affirmative.

9. So far as quantum of compensation is concerned, it appears that the learned Member of the tribunal has awarded just and reasonable compensation, except under the non-pecuniary heads. It is a part of record that after accident, appellant-claimant remained as indoor patient in the Ghati Hospital at Aurangabad from 21.3.2011 to 27.3.2011 and thereafter he was shifted to Rubi Hall Clinic, Pune where he was indoor patient from 28.3.2011 to 17.4.2011. During this period he underwent various surgeries. In the said accident,

aaa/-

his bladder was also ruptured for which he was thereafter taken treatment in Dahiphale Hospital from 14.5.2011 to 16.5.2011. However, the Tribunal has awarded compensation of Rs.50,000/- for pains and sufferings. The appellant-claimant is entitled for an amount of Rs.1,50,000/- for pains and sufferings. The appellant-claimant is a teacher by occupation. Though, the learned Tribunal has awarded Rs.50,000/- for the purpose of prosthesis/artificial leg, the claimant certainly will lose amenities in future life. Though, the learned member of the tribunal has awarded Rs.1.00 lacs under the loss of amenities in future life, it would be just and proper if Rs.50,000/- is added in the loss of amenities in future life.

10. Thus, the break up of compensation under various heads, which can be broadly categorized is as under :-

- | | |
|---|---------------|
| 1.Loss of leave for 7 months :
(As awarded by the Tribunal.) | Rs.1,87,782/- |
| 2. For purchasing artificial limb
as awarded by the Tribunal | Rs.0,50,000/- |
| 3.Permanent disablement
as awarded by the Tribunal | Rs.1,00,000/- |

aaa/-

4.Pains and sufferings (as against Rs.50,000/- awarded by the Tribunal)	Rs.1,50,000/-
---	---------------

5.Loss of amenities of life as against Rs.1.00 lac awarded by the Tribunal.	Rs.1,50,000/-
---	---------------

6.Medical expenses, special diet, transportation, Misc. expenses awarded by the Tribunal.	Rs.2,70,000/-
---	---------------

Rs.9,07,782/-
=====

11. The appellant is entitled for the same. Learned member of the Tribunal has awarded 7.5% interest. However, the claimant is entitled for interest @ 9% p.a. Impugned judgment and award thus requires modification. Hence, following order.

O R D E R

- I. First Appeal is hereby partly allowed with proportionate costs.

- II. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Beed, dated 9.6.2015 in MACP No.192 of 2011 is hereby modified in the following manner :-

- a] Respondents no.1 and 2 shall jointly and severally pay compensation of Rs.**9,07,782/-** (Rs. Nine lacs seven thousand seven hundred and eighty two only) including no fault liability to the claimant with interest @ 9% p.a. from the date of application till realization of the entire amount.
- III] First appeal accordingly disposed of.
- IV] If any amount is paid as per the judgment and award passed by the tribunal, the same shall be the part of the modified award.
- V] Award be drawn up as per the above modifications.

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

...

aaa/-

aaa/-