

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

FIRST APPEAL NO.754 OF 2004

Prakash S/o Sahebrao Akhade,
Age: 50 years, Occu: Agri.,
r/o : Pargaon, Tq.: Bhoom,
Dist. Osmanabad. ..Appellant

Versus

1. Raichand s/o Uttamchand Bora,
Age: Major, Occ: Business,
r/o: Pargaon, Tq.: Bhoom,
Dist: Osmanabad
(Owner of Commandar Mahindra
Jeep No.MH-25/4302).
2. The Oriental Insurance
Company Ltd., Solapur,
through the Divisional Manager,
The Oriental Insurance Company Ltd.,
442, West Mangalwar Peth,
Solapur.
Cover Note No.456206
Validity: 22.5.97 to 21.5.98. ..Respondents

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Mr. T.B. Bhosale, Advocate for Appellant.
Mr. S.K. Naikwade, Advocate for Respondent No.1.
Mr. Dhananjay Deshpande, Advocate for Respondent
No.2.

...

CORAM : P.R. BORA, J.
DATE : 26th SEPTEMBER, 2018.

ORAL JUDGMENT:-

. The claimant in Motor Accident Claim
Petition No. 293 of 1998 decided by the Motor
Accidents Claim Tribunal at Osmanabad on 29.11.2003
has preferred the present appeal challenging the

said judgment and award and seeking enhancement in the amount of compensation granted in the said award by the said Tribunal.

2. The appellant was injured in a vehicular accident happened on 11.5.1998 having involvement of a jeep bearing registration No. MH-25/4302 owned by respondent no.1 and insured with respondent no.2. The appellant had claimed the compensation of Rs. 5,00,000/- under different heads. It was his contention that he was required to undergo a long medical treatment and was subjected to incur huge medical expenses. It was his further contention that because of the accidental injuries, he incurred 75% permanent disablement and lost his earning capacity to that extent.

3. Respondent no.1 i.e. owner of the vehicle though had appeared before the Tribunal, did not file the written statement and the claim petition was proceeded without his written statement. The Insurance Company resisted the petition by filing its written statement on various grounds. The Insurance Company had raised an objection that the alleged accident had happened because of the sole

negligence of part of the driver of the jeep which gave dash to the jeep by which appellant was traveling. It was also alleged that the appellant also contributed the occurrence of the alleged accident since, he has kept his leg outside the jeep while traveling from the said jeep. The income etc. were also disputed by the Insurance Company.

4. The learned Tribunal after having assessed the oral and documentary evidence brought on record by the parties, partly allowed the petition and awarded the total compensation of Rs. 1,05,000/- inclusive of NFL compensation to the appellant jointly and severally from the owner and insurer of the jeep. The learned Tribunal while deciding the claim petition though determined the amount of compensation to the tune of Rs. 2,10,000/- held liable the respondents to pay half of the compensation i.e. 1,05,000/- only, observing that in occurrence of the alleged accident, the negligence on part of the driver of the jeep bearing registration No. MH-25/4302 was only to the extent of 50%. Aggrieved by, the appellant had filed the present appeal.

5. The learned counsel appearing for the appellant has assailed the impugned judgment on various grounds. It is contended that the learned Tribunal must not have made the apportionment of the amount of compensation since, the accident was the result of the composite negligence of two vehicles. It is further contended that the amount of compensation as has been awarded by the Tribunal is also unjust and inadequate.

6. Shri Deshpande, the learned counsel appearing for the respondent-Insurance Company has supported the impugned judgment and award. The learned counsel submitted that it was the contention of the appellant-claimant himself that in occurrence of the alleged accident, both the vehicles were equally responsible. The learned counsel submitted that infact, the objection as about the non-joining of the necessary party was also raised by the insurance company. The learned counsel further submitted that the finding recorded by the Tribunal, on the basis of the evidence on record shall not be interfered. The learned counsel, therefore, prayed for dismissal of the appeal.

7. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have also perused the impugned judgment and the evidence on record. The first question falls for my consideration is "whether the Tribunal could have made the apportionment of the amount of compensation when it had recorded a finding that the alleged accident happened because of the composite negligence of the drivers of both the vehicles involved in the said accident?".

8. It is not in dispute that two vehicles were involved in occurrence of the alleged accident. First was the jeep by which the appellant was traveling and another was also a jeep which gave dash to the jeep by which the appellant was traveling. It is further not in dispute that the appellant filed the claim petition only against the owner and insurer of the jeep by which he was traveling. The Tribunal on the basis of the evidence brought on record by the appellant determined the amount of compensation to the tune of Rs. 2,10,000/- however, held respondent nos. 1 and 2 liable to pay only half of the said amount to the appellant observing that in occurrence of the

alleged accident, the negligence on part of the jeep, the owner and insurer of which are made party to the petition, was only to the extent of 50%.

9. The finding recorded by the Tribunal as above is apparently unsustainable. The tribunal has held that the accident happened because of the negligence of both the vehicles involved in the alleged accident meaning thereby that it was a case of 'composite negligence'. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In the circumstances as held by the Hon'ble Apex Court in case of **T.O. Anthony Versus Karvarnan and Ors, 2008(5) Mh.L.J 7** "each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them". The Hon'ble Apex Court has further held that "the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the Court to determine the extent of liability of each wrongdoer separately".

10. In view of the law laid down as above, the apportionment of the compensation as has been made by the Tribunal cannot be sustained and deserves to be set aside. It has to be held that the appellant is entitled to receive the entire amount of compensation jointly and severally from the owner and insurer of the vehicle, who are made respondents in the claim petition.

11. Now as about the enhancement claimed by the appellant in the amount of compensation determined by the Tribunal. After having considered the submissions advanced by the learned counsel appearing for the appellant in this regard, it appears to me that enhancement is warranted only in the amount of compensation awarded by the Tribunal under the head of pain and suffering. The Tribunal has awarded the amount of Rs. 7,000/- under the said head. Having regard to the nature of injuries sustained to the appellant and the period of treatment undergone by him, it appears to me that the just and adequate compensation under the said head would be of Rs. 25,000/-.

12. So far as other aspects are concerned like loss of income, medical expenses, diet and conveyance expenses etc, the Tribunal has awarded the just and adequate compensation.

13. After having considered the entire material on record, I hold the appellant entitled for the total compensation of Rs. 2,28,000/- jointly and severally from respondent no.1 and 2. In the result, the following order is passed:

ORDER

- i) The appellant-claimant is held entitled for the total compensation of Rs. 2,28,000/- jointly and severally from respondent nos. 1 and 2 with interest thereon at the rate of 9% p.a. from the date of filing of the petition till its realization.
- ii) The impugned award be modified accordingly.
- iii) The appeal thus stands allowed in the aforesaid terms.

(P.R. BORA, J.)