

FIRST APPEAL NO.1715 OF 2012

1. With the consent of learned Counsel appearing for the parties, the appeal is finally heard.

2. The present appellant had filed Motor Accident Claim Petition No.101 of 2009 in the Motor Accident Claims Tribunal at Ahmednagar, claiming compensation on account of the injuries caused to him in a vehicular accident happened on 05.09.2008 having involvement of Mahindra Max bearing Registration No.MH-24 C-3562 owned by respondent No.1 and insured by respondent No.2. The appellant had claimed compensation of Rs.7,00,000/-. The Tribunal after having considered oral and documentary evidence brought on record by the parties, awarded compensation of Rs.1,50,000/- to the appellant inclusive of no fault liability amount, jointly and severally from respondent Nos.1 and 2. The appellant has preferred the present appeal seeking enhancement in the amount of compensation so awarded by the Tribunal.

3. Shri K.D.Bade Patil, learned Counsel appearing for the appellant criticised the impugned Judgment and award on various grounds. The learned Counsel submitted that the Tribunal has grossly erred in attributing negligence on the part of the present appellant and that too to the proportion of 40%. The learned Counsel submitted that the appellant had brought on record sufficient evidence to establish that the alleged accident happened

because of the sole negligence of the driver of Mahindra Max but the Tribunal has failed in appreciating the said evidence and has wrongly held the appellant to have contributed the occurrence of the alleged accident by his negligence. The learned Counsel invited my attention to the spot Panchanama and the Police papers, more particularly, the charge-sheet filed against the driver of Mahindra Max alleging total negligence on the part of the said driver.

4. The learned Counsel further submitted that the Tribunal has manifestly erred in recording a finding that the appellant did not lose his earning capacity because of the injuries caused to him in the alleged accident. The learned Counsel submitted that though the appellant did examine Dr.Kisan Maruti Golhar, who has issued permanent disability certificate to the appellant and duly proved the said certificate certifying that the petitioner suffered 50% permanent disability because of the injuries caused to him in the alleged accident, the Tribunal has rejected the said evidence for wrong reasons. The learned Counsel submitted that since it is a legal and procedural requirement that permanent disability certificate shall be under the signature of the Civil Surgeon, such a certificate was obtained by the appellant from Dr.Golhar, who was at the relevant

time Head of the Department of the Orthopedics in the Civil Hospital, instead of obtaining such certificate from the Orthopedic Surgeon, who treated the appellant for the accidental injuries.

5. The learned Counsel further submitted that the Tribunal has also committed an error in holding that the appellant has failed in proving his income as well as loss in his earning capacity because of the alleged permanent disability. The learned Counsel submitted that the appellant was entitled for the compensation of Rs.7,00,000/- and as such his claim petition must have been allowed in toto. The learned Counsel, therefore, prayed for allowing the Motor Accident Claim Petition No.101 of 2009 in toto.

6. Shri S.R.Bodade, learned Counsel appearing for respondent No.2 i.e. the National Insurance Company Limited, has resisted the submissions and objections made by the learned Counsel appearing for the appellant. The learned Counsel supported the impugned Judgment and award and submitted that no interference is liable to be caused in the impugned Judgment and award.

7. I have given due consideration to the submissions made by the

learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent No.2 Insurance Company. I have perused the impugned Judgment and the evidence on record.

8. The first objection raised by the appellant is that the Tribunal has erroneously held him also negligent in occurrence of the alleged accident to the extent of 40%. An attempt was made by learned Counsel Shri Bade - Patil to bring to my notice the situation at the spot as is revealing from the spot panchanama to urge that in occurrence of the accident, no negligence can be attributed on the part of the appellant.

9. I have carefully perused the spot panchanama. The accident had taken place on Ahmednagar - Aurangabad road. Admittedly, it is a State Highway. As recorded in the spot panchanama, the width of the road at the spot where accident occurred was 50 feet, moreover, there were side margins. As is further revealed from the situation at the spot, the accident occurred at the center of the road. The appellant was admittedly on his Motorcycle and the offending vehicle was Mahindra Max. If the nature of the damages caused to the vehicles involved in the accident i.e. Mahindra Max and Motorcycle

are taken into consideration, there remains no doubt that there was head-on-collision.

10. Having considered the facts as aforesaid, it does not appear to me that the learned Tribunal has committed any error in recording a finding that the appellant contributed the occurrence of the alleged accident by his negligence. When the accident did happen at the center of the road having 50 feet width, it clearly suggests that both the vehicles involved in the alleged accident were not being driven by observing the rules of traffic. Had the appellant been proceeding keeping his motorcycle on the reasonable distance from his left side, perhaps the accident would not have occurred. Same can be said as about the driver of the Jeep. It is thus quite evident that the appellant as well as the Jeep driver, both were negligent in driving their respective vehicles and the accident happened as a result of negligence of both of them. The Tribunal has further rightly determined the proportion of the negligence; 60% of Mahindra Max being a bigger vehicle and 40% of the appellant being driving comparatively a smaller vehicle. It cannot be disputed that a person driving a bigger vehicle owes some more responsibility than the person, who is driving a smaller vehicle. I, therefore, do not see any

reason to cause any interference in the findings recorded by the Tribunal as about the aspect of negligence as well as percentage of the negligence.

11. Another objection as was raised by the learned Counsel appearing for the appellant was that the Tribunal has wrongly refused to rely upon the permanent disability certificate certifying that the appellant incurred 50% permanent disablement as a result of the injuries caused to him and has substantially lost his earning capacity. In order to prove that he incurred 50% permanent disability, the appellant in addition to his own testimony, relied upon the evidence of PW-2 Dr.Golhar.

12. I have carefully perused the oral evidence of PW-2 Dr.Golhar as well as the permanent disability certificate issued by him in favour of the appellant. It is not in dispute that Dr.Golhar had never treated the appellant for the injuries sustained by the appellant in the alleged accident. As deposed by Dr.Golhar, he assessed the permanent disability on the basis of the injuries caused to the appellant in the alleged accident. On perusal of the evidence of Dr.Golhar, I find it difficult to fully agree with the submissions made on behalf of the

appellant as well as on behalf of the respondent No.2 Insurance Company. Only because Dr.Golhar did not treat the appellant in Civil Hospital, the disability certificate issued by him cannot be wholly rejected on that ground. The evidence on record shows that the appellant had suffered the fracture of right Tibia Fibula and fracture of right Ulna as well as fracture of Left Femur Shaft.

13. It is true that in his cross-examination, Dr.Golhar has admitted that the appellant can very well carryout his work sitting in his office. It is also true that Dr.Golhar did not certify the percentage of permanent disability on each limb. It is also true that Dr.Golhar also admitted that the petitioner can move and walk as he was doing earlier to the occurrence of the accident and that the fractures were reunited. The Tribunal has, however, failed in appreciating that it was specifically deposed by Dr.Golhar that because of the injuries caused to the appellant in the alleged accident, he may not be able to work in future in his field and also may not be able to drive.

14. If the aforesaid fact is considered, it is difficult to agree with the conclusion recorded by the Tribunal that the petitioner has not lost his earning capacity on account of permanent disability sustained

by him. However, the contention of the appellant that he incurred 50% permanent disability also cannot be accepted. In view of the admission given by Dr.Golhar that almost all fractures were reunited and the petitioner was able to move and walk as before, in no case it can be accepted that the petitioner incurred 50% permanent disability as certified by Dr.Golhar. It is further difficult to accept that the petitioner has lost his earning capacity to the extent of 50% because of permanent disability incurred to him out of the accidental injuries. From the evidence on record and more particularly, when the injuries caused i.e fractures of right Tibia Fibula and fracture of right Ulna as well as fracture of left Femur Shaft all are reunited as admitted by Dr.Golhar, the percentage of permanent disability in no case can be to the extent of 50%. It, however, cannot be denied that the injuries were caused to the appellant because of which some disability is incurred by him which would certainly have some impact on his working capacity. There is reason to believe that the appellant may not be able to carry on his work with the same zeal and vigour and with the same capacity. To that extent the appellant certainly needs to be compensated.

15. The Tribunal has awarded a lumpsum compensation of

Rs.50,000/- on the aforesaid ground. After having considered the evidence on record, I deem it appropriate to enhance the said compensation to Rs.1,50,000-. The Tribunal has awarded the medical expenses of Rs.1,92,970/-. There is no dispute about award of the said medical expenses. In addition to the said medical expenses, as I noted herein above, the appellant is also held entitled for lumpsum compensation of Rs.1,50,000/- i.e. total compensation of Rs.3,42,970/-. In view of the fact that the appellant is held negligent to the extent of 40% in the occurrence of the alleged accident, he is obviously entitled to receive the compensation to the extent of 60% jointly and severally from respondent Nos.1 and 2, which comes to Rs.2,05,782/-. It appears to me that this would be just, fair and appropriate compensation payable to the appellant. In the result, the following order is passed:-

ORDER

- I) The First Appeal is partly allowed.
- II) The amount of compensation determined by the Tribunal to the tune of Rs.1,50,000/- is enhanced to Rs.2,05,782/-.

- III) The remaining part of the award is maintained as it is.
- IV) Award be drawn accordingly.

(P.R.BORA)
JUDGE

SPT