

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

FIRST APPEAL NO. 1113 OF 2016

Mukund Bhagwantrao Dhavle,
Age: 40 Years, Occu: Driver,
R/o : Chinchala, Tq. Bhokar,
District Nanded.

..Appellant

Versus

1. Pandurang s/o Mhadu Dolkar,
Age: Major, Occu. Business,
R/o. Nivgha, Tq. Mukhed,
Dist. Nanded.

2. National Insurance Company Ltd,
Through its Divisional Manager,
Divisional Office Guru Govindsing Market,
Nagina Ghat, Dist. Nanded. ..Respondents

...

Mr. B.R. Kedar, Advocate for Appellant.
Mr. A.B. Gatne, Advocate for Respondent No.2.

...

**CORAM : P.R. BORA, J.
DATED : 18th SEPTEMBER, 2018.**

ORAL JUDGMENT:-

. Heard finally with consent of the learned
counsel appearing for the parties.

2. The appellant has preferred the present
appeal being aggrieved by the judgment and award
passed by the Motor Accident Claims Tribunal at
Nanded in Motor Accident Claim Petition No. 298 of
2010 decided on 23.09.2015.

3. The appellant had filed the aforesaid claim petition claiming compensation for the injuries suffered by him in a vehicular accident happened on 20.01.2010, having involvement of a car and a tractor. The appellant was traveling by a car and according to the contention as was raised by him in the claim petition, the tractor coming from the opposite direction gave a dash to their car and in the accident so happened, he received multiple injuries. It was the further contention of the appellant that the tractor was being driven in a rash and negligent manner and the accident happened because of the sole negligence of the driver of the said tractor. It was also the contention of the appellant that because of the injuries caused to him in the alleged accident, he was subjected to undergo a long medical treatment as well as hospitalization and was subjected to incur huge expenses. It was also the contention of the appellant that because of the injuries caused to him in the alleged accident, he has incurred 31% permanent disablement. The appellant was of the age of 35 years on the date of accident and as contended by him in his claim petition, he was

working as a driver as well as an agriculturist and was earning around Rs. 4000/- per month. The appellant had claimed the compensation of Rs. 6,00,000/- in total. In order to substantiate the contentions raised in the petition, the appellant himself deposed before the Court and filed on record the relevant police papers, hospital bills, medical bills etc.

4. The respondents did not adduce any oral or documentary evidence. The learned Tribunal after having assessed the oral and documentary evidence on record, partly allowed the petition filed by the appellant. The Tribunal has held the respondent nos.1 and 2 i.e. owner and insurer of the offending tractor liable to pay the compensation of Rs. 50,000/- to the appellant inclusive of NFL compensation with interest at the rate of 18% p.a. from the date of petition till its realization. Aggrieved by, original claimant has filed the present appeal.

5. Heard Shri Kedar, the learned counsel appearing for the appellant. The learned counsel criticized the impugned judgment on various grounds.

The learned counsel submitted that without framing any specific issue as about the contributory negligence, the learned Tribunal has held the appellant negligent in equal proportion that of the driver of the offending tractor and has thus deprived the appellant from the 50% amount of compensation determined by it. The learned counsel further submitted that neither any specific plea was raised by the respondent-insurance company, which only contested the petition nor the insurance company did adduce any positive evidence to establish the negligence of the appellant in occurrence of the alleged accident. The learned counsel submitted that in such circumstances, no negligence could have been attributed on the part of the appellant in occurrence of the alleged accident. The learned counsel further submitted that even, while determining the amount of compensation, the Tribunal by drawing unwarranted inference has deprived the appellant from the award of just and fair compensation. The learned counsel, therefore, prayed for adequate enhancement in the amount of compensation.

6. Shri Gatne, the learned counsel appearing for the respondent-insurance company opposed the submissions made on behalf of the appellant. The learned counsel supported the impugned judgment and award. The learned counsel further submitted that the Tribunal on the basis of evidence on record has arrived at the conclusion that in occurrence of the alleged accident, equal negligence was liable to be attributed on part of the appellant-claimant himself and as such has recorded such finding. The learned counsel submitted that it was well within the competence of the Tribunal, even though no specific issue in that regard was formally framed. The learned counsel submitted that the appellant in his cross-examination has candidly admitted that the alleged accident was head on collusion. In the circumstances, according to the learned counsel, the Tribunal has rightly held the appellant equally negligent in causing the accident in question. The learned counsel further submitted that there are serious material discrepancies in the facts deposed by the appellant in his testimony before the Court and the documents filed on record by him in support of his claim. The learned counsel further

submitted that the appellant did not legally prove the medical expenses as well as the permanent disablement allegedly incurred by him. The learned counsel submitted that the Tribunal has passed a well reasoned order and no interference is required in the judgment and award so passed. He, therefore, prayed for dismissal of the appeal.

7. I have given due consideration to the submissions advanced by the learned counsel appearing for the respective parties. I have perused the impugned judgment as well as evidence on record. First I would like to deal with the objections raised by the appellant as about the finding recorded by the Tribunal holding the appellant negligent in equal proportion in occurrence of the alleged accident. Admittedly, there was no such issue framed. However, the Tribunal is certainly not precluded from recording any such finding if, on the basis of evidence on record it reaches to the said conclusion. However, ordinarily the party which alleges negligence has to prove the said fact by leading positive evidence in that regard.

8. I have gone through the written statement filed by the respondent-insurance company before the Tribunal. No doubt in the written statement, the insurance company has stated that the accident happened because of the negligence of the claimant himself, however, the Tribunal did not frame any issue in that regard or cast the burden on the respondent-insurance company to prove its plea of contributory negligent on part of the appellant-claimant. In all fairness, the Tribunal must have framed the specific issue in that regard and must have cast the burden on the respondent-insurance company to prove it, which has raised such plea in its written statement. Even, if it is accepted that no specific issue was required to be framed, the fact remains that the insurance company did not adduce any evidence to substantiate the plea taken by it in its written statement alleging the negligence on part of the appellant-claimant in occurrence of the alleged accident.

9. Merely because the appellant-claimant did not specifically depose, as to who was driving the car, by which he was traveling at the relevant time, no conclusion could have been recorded by the

Tribunal that the appellant-claimant himself was driving the said car. Secondly, though the appellant-claimant appears to have admitted in his cross-examination that the alleged accident was head on collision, merely on the said admission it was impermissible to hold that the appellant-claimant himself was equally negligent in causing the alleged accident. The learned Tribunal must have scrutinized the other evidence available on record and more particularly spot panchnama wherein, the exact spot of occurrence is shown with the help of a sketch.

10. On perusal of the said document, it is difficult to agree with the conclusion recorded by the Tribunal that in occurrence of the alleged accident, the appellant had equally contributed by his negligence. After having considered the entire evidence on record, I find it difficult to agree with the conclusion recorded by the learned Tribunal that the appellant also contributed occurrence of the alleged accident by his negligence and that the proportion of the said negligence was equal. On the contrary, the spot of occurrence clearly demonstrates that there may not

be any negligence on part of the appellant or the person, who may be driving the car in which the appellant was an occupant at the relevant time. The sketch drawn while preparing spot panchnama clearly reveals that the tractor went on the wrong side and gave a dash to the car. In the circumstances, merely because the appellant gave an admission in his cross-examination that there was head on collision, no such inference can be drawn that it was a head on collision accident and no further inference can be drawn that the appellant himself had admitted that it was head on collision accident, so his negligence is to be held in equal proportion. It appears that the Tribunal did not carefully peruse the document of the spot panchnama or else no such conclusion could have been recorded by the learned Tribunal.

11. In light of the evidence on record, the finding recorded by the Tribunal attributing equal negligence on part of the appellant-claimant cannot be sustained and deserves to be quashed and set aside. I have no hesitation in holding that the alleged accident did happen because of the sole negligence on part of the driver of the offending

tractor and no negligence of any sort can be attributed on the part of the appellant-claimant.

12. Now, about the amount of compensation determined by the Tribunal to the tune of Rs. 1,00,000/-. According to the appellant-claimant, the amount of compensation so determined by the Tribunal is wholly unjust and improper. It was vehemently submitted by the learned counsel for the claimant that the Tribunal has overlooked the documentary evidence on record and based on some small discrepancies in the medical papers, unwarranted inferences are drawn by the learned Tribunal. I have carefully perused the evidence on record. Though, the appellant-claimant had claimed 31% permanent disablement, he did not adduce any evidence. The discrepancies as are elaborately discussed by the learned Tribunal in Para-15 of its judgment, cannot be said to be immaterial or non-cognizable. The overlapping dates on the discharge cards and on the hospital bills raised serious doubts about the genuineness of the facts as are deposed by the appellant-claimant or the genuineness of the documents placed on record by him.

13. In Para-18 of the impugned judgment, the Trial Court has rightly observed that though, it was the contention of the appellant-claimant that he incurred the expenses to the extent of Rs.3,00,000/- on the treatment taken by him in MGM Hospital at New Mumbai and thereafter, at the New Bombay Hospital at Vashi, not a single document is placed on record to show that the appellant incurred medical expenses of Rs. 3,00,000/- on his treatment. Further the permanent disability certificate does not disclose whether the disability as has been certified in the said certificate pertains to a particular limb or to the body as a whole. Having regard to the nature of the injuries caused to the appellant, a reasonable inference can be drawn that 30% of the permanent disablement as has been certified in the said certificate pertains to the particular part of the body.

14. After having considered the entire material on record, it does not appear to me that the Tribunal has committed any error in determining the amount of compensation payable to the appellant-claimant to the tune of Rs.

1,00,000/-. It does not appear to me that any case is made out by the appellant for enhancement in the amount of compensation so determined by the learned Tribunal. From the discussions made herein-above, it is thus evident that the appellant is entitled for the total compensation of Rs. 1,00,000/-, jointly and severally from the owner and insurer of the offending tractor. In view of the fact that I have recorded a conclusion that the finding arrived at by the Tribunal holding the appellant-claimant also negligible in equal proportion in occurrence of the alleged accident has been set aside, the entire amount of compensation has become liable to be paid by the owner and insurer of the offending tractor.

15. In the forgoing circumstances and for the reasons recorded above, the following order is passed:

ORDER

- i) The appeal is partly allowed.
- ii) The finding recorded by the Tribunal holding the appellant negligent in equal proportion in occurrence of the alleged

accident is quashed and set aside.

iii) The appellant is held entitled for the compensation of Rs. 1,00,000/- inclusive of NFL compensation, jointly and severally from respondent nos. 1 and 2 along with interest thereon at the rate of 9% p.a. from the date of filing of the claim petition till realization of the said amount.

iv) The award be drawn up accordingly.

(P.R. BORA, J.)

Mujaheed//