

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1054 OF 2016

The State of Maharashtra
(Through the Director of Social Welfare
Maharashtra State, Pune)

...Appellant

Versus

Shri Bajrang @ Hari Yashwant Tiwade & Anr.

...Respondents

.....

Mr.Yogesh Dabke, AGP for the Appellant/State.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JANUARY 10, 2018**

P.C.:

1. This Appeal is directed against the judgment and award dated 2nd May, 2006 passed by the learned Member, Motor Accident Claims Tribunal, Kolhapur in M.A.C.P.No. 49 of 2003.

2. The accident took place on 20th October, 2002 at about 6.30 p.m. when respondent no.1/claimant was riding a motorcycle from Khotewadi to Kagal on Sangli Kolhapur Road. When he was driving motorcycle with a moderate speed at that time the offending vehicle i.e Jeep No. MH-12-W-4324 came from Kolhapur side in rash and

negligent manner and dashed the motorcycle. Due to the dash given by the jeep, respondent no.1 sustained grievous injuries of fracture of clavicle, neck femur and fracture to frontal deep and other bodily injuries. He was shifted to the hospital of one Dr.Santosh Prabhu's. He was admitted there and had to undergo the operation for his fractures. He was bedridden for three months in the hospital. He was required to continue the medical treatment for about a year and ultimately, it was found that he had suffered permanent disability, as his leg was shortened. Hence, he filed the claim application for Rs. 2,82,000/- with interest @ 9% p.a. Notices were issued to the opponents. The opponents i.e. State and driver appeared in the matter and filed written statement resisting the claim. It was stated that on the day of accident, the jeep was proceeding from Ichalkaranji for the escort of the Minister of Social Welfare. At that time, the motorcyclist was coming from opposite direction along with three persons and he himself gave dash to the vehicle due to loss of control over the motorcycle as there were three persons on the motorcycle and the driver was not in a position to drive the motorcycle due to heavy weight on the vehicle and hence, the accident occurred. The claimant gave evidence and produced documents to prove his income and disability. The opponent/ State

did not examine any witness. The Tribunal, after considering the oral and documentary evidence, partly allowed the claim and granted compensation of Rs. 1,22,800/- along with interest @ 9% p.a. Hence, this Appeal.

3. The learned Counsel for the appellant/State has submitted that the order of the tribunal is challenged by the appellant/State mainly on the ground of contributory negligence and on the point of quantum. He has further submitted that respondent no.1/claimant was carrying three persons on the motorcycle and, therefore, he lost his balance. This fact should have been considered by the tribunal. He has argued that the main income of the claimant was from agriculture work and hence, it is not the case of the functional disability. The learned Member of the tribunal has failed to consider this fact. The tribunal should not have been granted the compensation for permanent disability.

4. Heard submission. Perused evidence, documents and also the impugned judgment and award passed by the tribunal. At the time of accident, the claimant was driving motorcycle and there were three persons as pillion riders. However, it is not a cause of losing

balance, but the jeep coming from Kolhapur side was in excessive speed and gave dash to the motorcycle and, therefore, the claimant lost his balance and fell down. Hence, this cannot be considered as the case of contributory negligence. The claimant has deposed about his injuries and medical treatment given to him. He has also deposed about the permanent disability caused to him due to accident. Due to permanent disability, the movements of the claimant are restricted and he cannot work in the agricultural field and supervise efficiently, as he was doing earlier. He has produced the medical evidence to corroborate his evidence. The learned Member of the tribunal has taken into account all the defence raised by the parties and has dealt with it correctly on the basis of evidence adduced before it. Hence, I do not find any reason to interfere with the order passed by the learned Member of the tribunal. There is no merit in the Appeal. The compensation awarded by the Tribunal is just and adequate. Hence, the First Appeal is dismissed.

5. In view of dismissal of First Appeal, Civil Application do not survive, hence the same is also disposed of accordingly.

(MRIDULA BHATKAR, J.)