

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

907 FIRST APPEAL NO.2375 OF 2012

Balu Shankar Ghadge,
Age; Major, Occ; Driver,
Resident of Dastgir Wadi,
Tq. Ambajogai, Dist. Beed.

...APPELLANT
(Orig. Resp. No. 1)

VERSUS

1. Haridas Baliram Pawar,
Age; 55 years, Occ; Agril,
Resident of Deola,
Tq. Ambajogai, Dist. Beed.
2. Shaikh Gaus Shaikh Habib,
Peth Mohalla, Parli Vaijanath,
Dist. Beed.
3. New India Assurance Co. Ltd.,
Through Branch Manager,
Ashiyana Building, Jalna Road,
Beed.

...RESPONDENTS
(Orig. Respondents)

...
Advocate for Appellant : Mr. M.S.Karad h/f
Mr.S.S.Thombre.
Advocate for Respondent No. 3 : Mr.Kanade Arun G.

...

CORAM : SUNIL K.KOTWAL, J.

DATE : 03rd APRIL, 2019

ORAL JUDGMENT :

This appeal is filed by the owner and driver of Auto Rickshaw no. MH-23-C-722, who was original Opponent No. 1, against the judgment and award passed by the Motor Accident Claims Tribunal, Ambajogai in MACP No. 118 of 2017. Respondent No. 1 is the claimant, respondent no. 2 is the driver of Auto Rickshaw No. MH-44-6387 involved in the accident and respondent no. 3 is the insurer of this Rickshaw. The owner and insurer of this second Auto Rickshaw have not disputed the correctness of the award passed by the Tribunal.

2. Facts in nutshell are that on the date of accident i.e. from 7.12.2006, when the claimant and his wife were travelling by auto rickshaw No. MH-44-6387 at noon hours, the offending rickshaw came from opposite direction and gave dash to it. The accident occurred due to rash and negligent driving by the drivers of both auto rickshaws. In that accident, claimant sustained permanent disability and

therefore, he filed the claim petition for compensation.

3. The owners of both auto rickshaws have not filed their written statement before the Tribunal. Only respondent No. 3 opposed this claim petition denying its liability.

4. After considering evidence on record by the Tribunal, the Tribunal held that the drivers of both auto rickshaws involved in the accident plied their respective vehicles in rash and negligent manner, resulting into permanent disability to the claimant to the extent of 30%. In the result, compensation of Rs. 1,82,859/- was awarded and 50% liability was apportioned in between the owners of both auto rickshaws. The insurance company was jointly and severally held liable alongwith respondent No. 2.

5. Heard Advocate Mr. Karad, h/f Mr. Thombre,

learned counsel for appellant and Mr. A.G. Kanade, learned counsel for respondent no. 3.

6. Learned counsel for appellant fairly submits that he did not file written statement before the Tribunal in defence. However, he raised objection that the sole testimony of the claimant should not be believed as it is, which is not corroborated by his wife, who was also travelling by the rickshaw involved in the accident.

7. Learned counsel for respondent no. 3 has drawn my attention towards FIR, which indicates that the offending rickshaw gave dash to auto rickshaw No. MH-44-6387, which was in stationary condition. He has drawn my attention to the deposition of the claimant (PW-1).

8. I have gone through the evidence of claimant (PW 1). The claimant (PW 1) has categorically stated

before the Tribunal that accident dated 7.12.2006 occurred due to rash and negligent driving by the drivers of both auto rickshaws, involved in the accident. The record shows that even the claimant (PW 1) is not cross-examined by the owner/driver of auto rickshaw No. MH-23-C-722, who is appellant in the present appeal. Otherwise also, I do not find any reason to disbelieve the testimony of claimant (PW 1) regarding the rash and negligent driving by the driver of rickshaw No. MH-23-C-722. The testimony of claimant (PW 1) is also corroborated by police papers, disability certificate (Exh. 35) and M.L.C. Certificate (Exh. 36) on record.

9. In the circumstances, I have no hesitation to hold that the above said accident occurred due to rash and negligent driving of appellant and the driver of another rickshaw involved in the accident. In such circumstances, this appeal being devoid of merit, deserves to be dismissed as no other ground is

argued by learned counsel for appellant.
Accordingly, First Appeal No. 7375 of 2012 is
dismissed.

10. Parties to bear their respective costs.

[SUNIL K.KOTWAL, J.]

mahajansb/