

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

FIRST APPEAL NO. 452 OF 2008

Sanjay Vitthal Musale
Age : 37 years, occu.: business
R/o Pimpalner, Tal. Sakri,
District Dhule.

Appellant.

Versus

1. Madhavrao Devrao Patil
Age : 50 yrs, occu.: agri.,
R/o Sangode, Tal. Sakri,
District Dhule.
2. Oriental Insurance Co.Ltd.
Branch Office, Dhule.

Respondents.

Mr. C.C. Deshpande, Advocate holding for
Mr. C.R. Deshpande, Advocate for the appellant.
Mr. D.J. Patil, Advocate holding for
Mr. N.B. Suryawanshi, Advocate for respondent No.1.
Mr. R.C. Bora, Advocate holding for
Mr. P.P. Bafna, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 2 April 2019.

Judgment pronounced on : 16 April 2019.

JUDGMENT.

. This appeal is directed by the original opponent No.1,
who is the owner and driver of jeep bearing registration No.

MZN-3492 (offending vehicle) against the judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”), Dhule in Motor Accident Claim Petition (M.A.C.P.) No. 939/2009, whereby compensation of Rs.35,000/-, was awarded by the Tribunal and liability was fastened only against opponent No.1.

2. Respondent No.1 in the appeal is original claimant and respondent No.2 is original opponent No.2 – Insurance Company of the offending vehicle. Hereinafter the parties are referred to in accordance with their status in original claim proceeding as the “claimant”, “owner of offending vehicle” and “insurer”.

3. The facts leading to institution of this appeal are that on 01.06.2003 when the claimant was proceeding by road, that time the offending vehicle came from opposite direction and gave dash to the claimant resulting into injuries to his left leg and private part. Claimant was admitted in the hospital of Dr. Shinde at Sakri and subsequently he was treated at Dhule for 15 days. The above accident occurred due to rash and negligent driving by opponent No.1, who is the owner and driver of the

offending vehicle. Therefore, the claimant filed this claim petition for compensation of Rs. 1,00,000/-.

4. By filing written statement (Exh. 17) opponent No.1 opposed the petition denying involvement of his vehicle in the above-said accident. He contended that the claimant has habit to file such false complaints to extract money from the public at large. On 01.06.2003 and 17.06.2003 the jeep of opponent No.1 was at Malegaon at the residence of relative of opponent No.1.

5. Even the opponent No.2 – Insurance Company denied the claim of claimant in toto.

6. After considering the evidence placed on record, the Tribunal awarded compensation of Rs. 35,000/- to the claimant. That award is challenged in the present appeal.

7. Heard Mr. C.C. Deshpande, advocate holding for learned Counsel Mr. C.R. Deshpande for the appellant, Mr. D.J. Patil, advocate holding for learned Counsel Mr. N.B. Suryawanshi for respondent No.1 and Mr. R.C. Bora, learned Counsel holding for learned Counsel Mr. P.P. Bafna, Advocate for respondent No.2.

8. Learned Counsel for the appellant submits that though the claimant claims that the accident occurred on 01.06.2003, in the claim petition the date of occurrence is mentioned as 17.06.2003. He submits that even if assuming that the accident occurred on 01.06.2003, the First Information Report is lodged after inordinate delay on 17.06.2003. He has pointed out that even the injury certificate (Exh.29) issued by Dr. Marathe (PW-2) indicates that it was issued on 16.07.2003 and there is no reference of examination of the claimant by Dr. Marathe on 02.06.2003. He submits that even the claimant has not examined concerned doctor who issued permanent disability certificate (Exh.30) to prove that in that accident the claimant sustained permanent disability. His next contention is that no bills of medicines have been filed by the claimant. Therefore, general damages awarded by the Tribunal are patently erroneous.

9. Learned Counsel for the claimant submits that typographical mistake in the pleading regarding the date of occurrence as well as delay in lodging F.I.R. cannot be a ground to reject the claimant. He submits that the evidence of claimant

Madhavrao (PW-1) is corroborated by the testimony of Dr. Marathe who has proved injury certificate (Exh.29).

10. In the case of personal injury matters, there is a landmark judgment in the case of “**Raj Kumar Vs. Ajay Kumar and another**” [**2011 (2) Mh.L.J. 569**], where the Apex Court held that in personal injury cases compensation is to be awarded under the following heads :-

Pecuniary damages (Special Damages) :-

- (I) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages) :-

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

11. In the same case the Apex Court laid down the guideline that in routine personal cases, compensation will be

awarded under head of expenses regarding treatment, hospitalization, medicines, transportation, nourishing food, loss of earning during the period of treatment and the damages for pains, suffering and trauma. Only in serious cases of injury, where there is specific medical evidence, corroborating the evidence of claimant, that compensation will be granted under the heads of loss of future earning on account of permanent disability, future medical expenses, loss of amenities and loss of expectation of life. The apex Court also held that in personal injury cases the Tribunal has to assess effect of permanent disability of earning capacity of the injured and after assessing the loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money, to arrive at the future loss of earning. The tribunal has to consider whether the disablement is permanent total disablement or permanent partial disablement and if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of limb on the functioning of the entire body, that is the permanent disability suffered by the person. The tribunal has to consider the avocation, profession and nature of the work of claimant before the accident and also his age. It has

to ascertain as to what activities claimant could carry on inspite of permanent disability and what he could not do as a result of permanent disability. The Tribunal has to consider whether the claimant was prevented or restricted from discharging his previous activities and functions. Regarding medical evidence the Apex Court has opined that the Tribunal should act with caution, if it is proposed to accept the expert evidence of doctor, who did not treat the injured but who give disability certificate, without proper medical assessment. Where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding genuineness of such certificate. Mere production of disability certificate or discharge certificate will not be proof of extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed extent of disability of claimant is tendered for cross-examination with reference to the certificate. The percentage of permanent disability cannot be assumed to be the percentage of loss of earning capacity.

12. It is pertinent to note that in para-6 as well as in para-14 of the claim petition, by making correction in

handwriting, the claimant has mentioned the date of accident as "17.06.2003". However, copy of F.I.R. (Exh.27) shows the date of accident as "01.06.2003", where in the deposition the claimant Madhavrao (PW-1) deposed regarding date of occurrence of the accident as "01.06.2003" at 10.30 a.m. on Samode to Pimpalner road. Thus, due to this total conflict in between the pleadings and oral evidence of the claimant as well as police papers, on the face of the record the contention of claimant has become doubtful that on 01.06.2003 due to dash given by jeep of opponent No.1, he sustained injuries resulting into permanent disability. No other witness is examined by the claimant in support of his contention.

13. No doubt, by examining Dr. Marathe (PW-2) the claimant has proved injury certificate (Exh.29) issued by Dr. Marathe. According to Dr. Marathe (PW-2), he examined the claimant on 02.06.2003. However, claimant Madhavrao (PW-1) deposed on oath that on 01.06.2003 he sustained injuries in the accident and he was brought to Dr. G.N. Marathe at Sakri. Claimant Madhavrao (PW-1) nowhere deposed that on the next day of the accident he was admitted in the hospital of Dr. G.N. Marathe. Thus, it becomes extremely doubtful as to exactly on

which date Dr. Marathe (PW-2) examined the claimant. The climax is that, the injury certificate (Exh.29) is issued on 16.07.2003. A careful examination of this certificate shows that in the certificate it is nowhere mentioned that the claimant was examined on 02.06.2003. Thus, from the certificate (Exh.29) it can be gathered that the claimant was examined by Dr. Marathe (PW-2) on 16.07.2003. In this certificate the age of injuries sustained by the claimant is mentioned "within 24 hours". Thus, as per the certificate (Exh.29) the claimant sustained injuries between 15.07.2003 and 16.07.2003. Thus, on the face of record the injury certificate (Exh.29) and even the testimony of Dr. Marathe (PW-2) is not at all reliable and needs to be discarded.

14. The most interesting thing is that the permanent disability certificate issued on 17.09.2004 by Civil Surgeon, Government Hospital, Dhule indicates that the claimant sustained injuries in accident on 16.07.2003 and he was admitted in Government Hospital on 16.07.2003. This permanent disability certificate also recites that the claimant was admitted in private hospital of Dr. Shinde on 16.07.2003. However, Dr. Marathe (PW-2) deposes that on 02.06.2003 the claimant visited

his hospital for treatment. In cross-examination this witness has again made contradictory statement that the claimant had been to his hospital for follow-up treatment on 16.07.2003. Thus, due to these inconsistent statements of Dr. Marathe (PW-2) coupled with permanent disability certificate and injury certificate (Exh.29) issued by Dr. Marathe (PW-2), I am fully satisfied that neither Dr. Marathe (PW-2) is reliable nor the documentary evidence placed on record by claimant is reliable to hold that on 01.06.2003 claimant sustained injuries in motor vehicular accident due to offending vehicle and due to those injuries he sustained permanent disability. Even the permanent disability certificate (Exh.30) does not appear to be genuine and as ruled by the Apex Court in the case of **“Raj Kumar Vs. Ajay Kumar”** (supra), mere filing of the certificate will not be proof of extent of disability stated therein when the concerned Doctor is not examined.

15. So also the Apex Court has made it clear that percentage of permanent disability cannot be assumed to be percentage of loss of earning capacity. Dr. Marathe (PW-2) nowhere deposed that due to permanent disability sustained by

the claimant, his earning capacity is adversely affected in any manner. In the circumstances, neither it can be held that on 01.06.2003 claimant sustained permanent disability in motor vehicular accident due to rash and negligent driving of the offending vehicle nor it can be held that due to permanent disability claimant sustained loss of future income or any other type of loss. Even no evidence is available on record to prove that the claimant was hospitalized for any particular period in the hospital of Dr. Marathe (PW-2). Even Dr. Marathe (PW-2) nowhere deposed as to for how many days the claimant was admitted in his hospital. Therefore, no compensation can be awarded to the claimant for the loss during the period of hospitalization. On the other hand, I am doubtful whether really the claimant sustained any injury and really he was admitted in the hospital at any time.

16. No bills of medicines have been filed by claimant to prove that he had spent any amount towards his medical treatment. In the circumstances, I have no hesitation to hold that the entire claim of the claimant is absolutely false claim and and he is not entitled to compensation.

17. In the result, I hold that this appeal deserves to be allowed and judgment and award passed by Motor Accident Claims Tribunal, Dhule in M.A.C.P. No. 939/2003 deserves to be set aside and claim petition deserves to be dismissed.

18. Accordingly, First Appeal No. 452 of 2008 is allowed. Judgment and award passed by Motor Accident Claims Tribunal, Dhule in M.A.C.P. No. 939/2003 is set aside. M.A.C.P. No. 939/2003 is dismissed.

19. Parties to bear their respective costs of the appeal.

20. If any compensation is deposited by the appellant in this Court or before the Tribunal, the same be refunded to the appellant (original opponent No.1 namely Sanjay Vitthal Musale).

(SUNIL K. KOTWAL)
JUDGE

vdd/