

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

FIRST APPEAL NO.606 OF 2010

Shivaji s/o Arjunrao Mane,
Age 40 yrs, Occ. Labour & Contractorship
R/o Kaikad Galli, Bhoom,
Tq. Bhoom Dist. Osmanabad. ...Appellant

Versus

1. Baliram s/o Krishnaji Pokale,
Age: Major, Occ: Business,
R/o.- Balewadi, Ta. Barshi,
Dist.- Solapur, (Owner of
Tempo No. MH-13/B-3836).
2. The New India Assurance Co. Ltd;
Dhule, through, The Branch Manager,
The New India Assurance Co. Ltd;
Shivaji Chowk, Naik Nivas,
Osmanabad. ...Respondents

...

Mr. Praveen M. Kulkarni, Advocate for Appellant.
Mr. V.R. Mundada, Advocate for Respondent No.2.

...

**CORAM : P.R. BORA, J.
DATED : 18th FEBRUARY, 2019.**

ORAL JUDGMENT:-

1. The claimant in Motor Accident Claim Petition No.45 of 2006 decided by the Motor Accident Claims Tribunal at Osmanabad on 16.03.2009 has preferred the present appeal seeking enhancement in the amount of compensation awarded by the said Tribunal.

2. The appellant who is hereinafter referred

to as the 'claimant' had preferred the aforesaid claim petition claiming compensation on account of injuries caused to him in a vehicular accident happened on 05.11.2005 having involvement of a Tempo bearing registration no. MH-13-B-3836 owned by present respondent no.1 and insured with present respondent no.2. It was the case of the claimant that when he was proceeding on his motorcycle bearing registration no. MH-13-B-8767 towards Barshi along with his son, he was dashed by the aforesaid tempo and in the accident so happened, he received multiple injuries for which he was required to undergo a long treatment and was also subjected to incur huge expenses. It was further contention of the appellant-claimant that the alleged accident happened because of the sole negligence on part of the driver of the offending tempo. The claimant had therefore claimed compensation initially of the amount of Rs.2,50,000/- and subsequently he enhanced the amount of compensation to Rs.4,00,000/-. In order to substantiate the claim, the claimant himself deposed before the Court, examined the doctor who treated him and placed on record all police papers

pertaining to the accident in question as well as hospital bills and medical bills.

3. The insurance company had opposed the claim on various grounds. It was the contention of the insurance company that in occurrence of the alleged accident, the entire negligence was of the claimant and no negligence was liable to be attributed on part of the driver of the tempo. The quantum was also disputed by the insurance company. The percentage of disability was also not admitted by the insurance company. The learned Tribunal after having assessed the oral and documentary evidence brought on record before it held the appellant-claimant entitled to the total compensation of Rs.2,00,000/- inclusive of NFL compensation. Since, according to the appellant, the Tribunal has not awarded the just and fair compensation, he has preferred the present appeal seeking enhancement in the amount of compensation.

4. Shri Kulkarni, the learned counsel appearing for the appellant-claimant submitted that without assigning any cogent reason, the Tribunal has attributed 50% negligence on part of the

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appellant-claimant. The learned counsel taking me through the evidence on record and more particularly the police papers submitted that the evidence which has been brought on record by the claimant unambiguously show that in occurrence of the alleged accident no negligence can be attributed on part of the appellant-claimant and the driver of the tempo was liable to be held solely negligent. The learned counsel submitted that the Tribunal has recorded an erroneous finding because of which claimant has been deprived of 50% of the compensation. The learned counsel further submitted that the Tribunal has also failed in considering that the appellant-claimant suffered 55% permanent disablement in the alleged accident and as such the amount of compensation as was claimed by the appellant-claimant to the tune of Rs.4,00,000/- was liable to be awarded in toto. The learned counsel in the circumstances prayed for allowing the appeal and to enhance the amount of compensation to Rs.4,00,000/- as was claimed by him in the claim petition.

5. Shri Mundada, the learned counsel appearing for the respondent-insurance company

supported the impugned judgment and award. The learned counsel submitted that the Tribunal has passed a well reasoned order and considering the evidence on record has held the appellant-claimant entitled for the compensation of Rs.2,00,000/-. According to the learned counsel, the compensation as has been awarded by the Tribunal is just and fair. The learned counsel in the circumstances prayed for dismissal of the appeal being devoid of any substance.

6. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have perused the impugned judgment as well as the evidence on record. Apparently, it is revealed that the Tribunal has nowhere discussed or assigned any reason as about holding the present appellant negligent in occurrence of the alleged accident to the extent of 50%. Only the conclusions are recorded by the Tribunal in Para-25 of the judgment that according to the Tribunal the percentage of negligence on part of the appellant-claimant is 50%. In earlier paragraphs, though some discussion is there, on perusal of the said discussion, it does not appear

to me that the Tribunal has rightly appreciated the evidence on record. The primary evidence was placed on record by the appellant-claimant showing that in occurrence of the alleged accident, the tempo driver was prosecuted by the police and no prosecution was filed against the appellant-claimant. The situation on the spot also leads to an inference that in occurrence of the alleged accident the greater negligence is of the tempo driver. Considering the evidence on record, it does not appear to be a case of head on collision. In his deposition before the Court, the claimant had denied the suggestions given in this regard. There is no contrary evidence from the other side. In the circumstances, the conclusion drawn by the Tribunal holding the appellant-claimant responsible in equal proportion in occurrence of the alleged accident is unsustainable and deserves to be set aside.

7. It however, does not mean that in occurrence of the alleged accident, no negligence can be attributed on the part of the appellant-claimant. In view of the facts as are deposed by the claimant and the facts which have come on

record in his cross-examination, there is reason to believe that damage was caused to the motorcycle on its right side, which indicates that the claimant did not take care of taking his motorcycle to his extreme left to avoid the alleged accident. Considering the facts as aforesaid, according to me, the negligence on part of the motorcyclist can be held only to the extent of 25%.

8. The learned Tribunal though has determined the amount of compensation payable to the claimant to the tune of Rs.4,00,000/-, the respondents are held liable to pay only 50% amount of the said compensation to the claimant in view of the finding recorded by the Tribunal that in occurrence of the alleged accident, negligence on part of the claimant was to the extent of 50%. In view of the finding recorded by me that the negligence only to the extent of 25% is liable to be attributed on part of the appellant-claimant, the respondents need to be made liable to pay 75% of the total amount of compensation i.e. an amount of Rs.3,00,000/- to the appellant-claimant. In the facts and circumstances of the case, it appears to me that the compensation of Rs.3,00,000/- would be

just and fair amount of compensation payable to the appellant-claimant. In the result, the following order is passed:

ORDER

- i) The amount of compensation payable to the appellant-claimant jointly and severally by the present respondents is enhanced by Rs.1,00,000/-.
- ii) The respondents do jointly and severally pay the aforesaid enhanced amount of compensation to the appellant-claimant with interest accrued thereon at the rate of 7.5% p.a. from the date of filing of the appeal till its realization.
- iii) The appeal thus stands partly allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//