

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

First Appeal No. 0667 of 2019

District : Beed

Devidas s/o. Limba Rathod,
Age 45 years,
Occupation Agriculture,
R/o. Lohar Maltanda, .. Appellant
Takarwan, Taluka Majalgaon, (Original
District Beed. respondent)

versus

Asaram s/o. Gabaru Aade,
Age 47 years,
Occupation Agriculture,
R/o. Vanyacha Mala Tanda, .. Respondent
Takarwan, Taluka Majalgaon, (Original
District Beed. claimant)

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Mr. Vilas P. Savant, Advocate, for the appellant.

*Mr. Sudarshan J. Salunke, Advocate, for the
respondent.*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 13th June 2019**

**Date of pronouncing
the judgment : 09th July 2019**

JUDGMENT :

01. Present appeal has been filed by the original respondent challenging the judgment and award passed by learned Ad hoc District Judge-1 &

Member of the Motor Accident Claims Tribunal, Majalgaon, District Beed, in Motor Accident Claim Petition No. 02 of 2011, dated 24-08-2015, whereby the petition filed by the present respondent under Section 166 of the Motor Vehicles Act, 1988 came to be partly allowed against him. [Parties are referred by their nomenclature before the Tribunal henceforth.]

02. The original petitioner had come with a case, that he was travelling along with other passengers in motor jeep bearing registration no. MH-23/E-2140 from Majalgaon to Takarwan at about 06.00 to 06.30 p.m. on 16-10-2010. Present petitioner, who is the owner of the said vehicle, was driving it in high speed, rash and negligent manner. It is stated that the jeep driven by the respondent gave dash to tractor bearing no. MH-23/P-5165 which was coming from the opposite direction. As a result of the dash, the petitioner sustained injuries to his right and left leg, right thigh, hand and back. He was then admitted to Government College & Hospital, Aurangabad. The respondent was prosecuted by Majalgaon Police for the said accident. It is stated that he has suffered 15 % disability due to the accidental injuries. He had incurred huge medical expenses. He was a labour getting monthly income of Rs. 5,000/- per month and was aged 42 years. He has claimed compensation to the tune of Rs. 18,00,000/-

but restricted it to Rs. 6,00,000/- for the purpose of court-fees.

03. The respondent filed written statement at Exhibit 19. He admitted that the petitioner was travelling from his jeep but then denied that the accident had taken place due to his negligence. He has tried to contend that the accident took place due to the rashness and negligence on the part of the tractor driver who had come from opposite direction and also stated that the application is not maintainable for non-joinder of necessary parties.

04. Taking into consideration rival contentions, issues came to be framed. The applicant has led oral as well as documentary evidence. Taking into consideration evidence led by him, the learned Tribunal has partly allowed the petition. The respondent was directed to deposit amount of Rs. 2,96,371/- towards compensation together with interest at the rate of 9 % per annum from the date of filing of the petition till actual realization of the entire amount. This order / award is challenged in this first appeal.

05. Heard learned Advocate Mr. V.P. Savant appearing for the appellant and learned Advocate Mr. S.J. Salunke appearing for the respondent. Perused the record and proceedings.

06. Following points arise for determination.
Findings and reasons for the same are as follows :-

(I) Whether the petitioner had proved that he suffered permanent disablement in vehicular accident that had taken place on 16-10-2010 ?

(II) Whether he further proves that the said accident had occurred due to the rashness and negligence on the part of the respondent while driving Commander jeep bearing no. MH-23/E-2140 ?

(III) Whether he is entitled to get compensation ? If yes, at what rate ?

(IV) Whether interference is required in the order passed by the learned Tribunal ?

All the points are taken up together for discussion for the sake of convenience and to avoid repetition.

07. At the outset, it has been submitted on behalf of the appellant, that the learned Tribunal failed to consider that there was no evidence adduced by the applicant to prove the disability certificate. The said disability certificate has been exhibited during evidence of the petitioner. However, the

concerned Medical Officer who had issued the said certificate has not been examined. Further, as per the said certificate, the disability is to the extent of 15 %. However, the learned Member without considering any evidence, came to the conclusion that the petitioner would have suffered 50 % loss in income due to the said disablement. The calculation of the amount has been done on wrong assumptions.

08. Per contra, learned Advocate appearing for the respondent has supported the reasons given by the learned Tribunal.

09. The record shows that the applicant has examined himself at Exhibit 23. He has filed his affidavit in chief and he has been cross examined at length by the respondent. Thereafter, he has closed his side for adducing oral as well as documentary evidence by filing *Pursis* at Exhibit 31. The important point to be noted is that after his affidavit in chief was taken and his verification was taken, the documents in the form of discharge card bill, certified copy of spot *panchanama* have been exhibited. But thereafter it appears that the original injury certificate, Form "B" Exhibit 48, showing permanent disability of 15 % issued by the Chairman, Orthopedic Board and Members of the Board has been produced on record. In order to prove the said document, any signatory to the certificate has

not been examined. From the judgment also, it cannot be stated as to under which provisions, the said Form "B" has been treated as proved. Specific argument was advanced by the respondent, that though exhibits are given, yet the author of the certificate has not been examined and, therefore, those documents cannot be considered. It appears that only observation is made that since the disability certificate Exhibit 48 is issued by Medical Board under the signature of the Member of the Orthopedic Board, District Hospital, Beed, it has been read in evidence. Further, based upon the said certificate, the learned Member has considered the financial loss of the petitioner to the extent of 50 % and accordingly the compensation has been awarded. The question here is, as to whether the said document Exhibit 48 can be said to be proved or admissible in evidence.

10. In *Rajesh Kumar Vs. Yudhvir Singh & another* [2008 ACJ 2131 (SC)], the Hon'ble Apex Court has held that the Tribunal cannot accept a disability certificate without examining the Doctor concerned. In other words, it was stated that the author of the disability certificate should be examined. Here, in this case, the certificate Exhibit 48 i.e. Form "B" was issued by the Chairman, Orthopaedic Board, Civil Surgeon, D.H., Beed; Orthopaedic Surgeon, Class-I, Member of Orthopaedic Board, D.H., Beed; General Surgeon, Class-I, Orthopaedic Board Member, D.H.,

Beed and R.M.O., Member of Orthopaedic Board, D.H., Beed. It shows that they had assessed the permanent disability of the petitioner to the extent of 15 %. No doubt, the Board is established all over Maharashtra under the rules and as per directions by the Government, they were established just to assess the physical disability of a person. Though broadly it may be stated that the said certificate was issued by the Committee / Board in the official discharge of their work, yet, when it comes to the financial loss or claim of the petitioner, that the said physical disability has affected his earning capacity, then the petitioner ought to have examined any one of the signatory to the certificate Exhibit 48. It also appears that at Exhibit 44, application was given by the applicant to issue summons to the concerned authority. However, it appears that he did not remain present and, therefore, by another application it was prayed that bailable warrant should be issued. But then, the record does not show as to what happened to that and some other applications were filed. That means, even the petitioner was in favour of examining the author of the certificate. Reasonable opportunity ought to have been given by the Tribunal to secure presence of one of the signatories to the certificate and to get it proved by its author. Since the author of the certificate has not been examined, the said document cannot be considered.

11. As regards the other point i.e. rashness and negligence on the part of the present appellant, he has not led any evidence and the cross of the petitioner taken on his behalf does not show any serious challenge to the fact of accident. In fact, in his written statement, he has admitted that the petitioner was travelling in the offending vehicle which was driven by the opponent. Under that circumstance, it was for the opponent to explain as to how the petitioner sustained injuries. Merely by denying the allegations, the facts cannot be inferred in his favour. The opponent has been prosecuted by the police for the said accident. The petitioner has given in his examination as to how the accident took place due to the rashness and negligence on the part of the opponent. Therefore, there was ample evidence on record to come to the conclusion that the accident took place due to the negligence on the part of the opponent. Therefore, he is liable to pay the amount of compensation to the petitioner.

12. The petitioner has proved that he sustained accidental injuries. He has proved that the said accident was caused due to the negligence on the part of the opponent and, therefore, he is entitled to get compensation. Under such circumstance, as regards quantum, when he has not examined author of the disability certificate, in my opinion, taking into consideration the nature of the legislation i.e.

socio-economic, matter deserves remand to get an opportunity to the claimant / petitioner to examine the author and then to come to a conclusion as to whether that permanent disability has affected the earning capacity of the petitioner and to what extent. Now, since the matter deserves remand, I refrain myself from taking the task of computing the compensation to which the applicant is entitled to get as the said task would be then left to the Tribunal concerned. It can be definitely said that without the said evidence on record, the learned Tribunal was not justified in coming to the conclusion that for 15 % physical disability, the petitioner would have sustained 50 % financial loss, as well. It will not be out of place to mention here that sometimes the percentage of disability may be small but it may affect even the total earning capacity of a person. Therefore, proper appreciation of the evidence was necessary in this case. Since it has not been done, the matter deserves remand.

13. With the aforesaid observations, following order is passed :-

(a) The appeal is hereby partly allowed.

(b) The judgment and award passed by learned Ad hoc District Judge-1 & Member of the Motor Accident Claims Tribunal, Majalgaon, District Beed, in Motor

Accident Claim Petition No. 02 of 2011, dated 24-08-2015, is hereby set aside. The said petition is restored to the file of learned Member of the Motor Accident Claims Tribunal, Majalgaon. The concerned Tribunal is directed to give an opportunity to the petitioner to lead evidence by examining author of the disability certificate or any such person to whom the petitioner intends to examine, including himself again also and thereafter again giving an opportunity to the respondent to lead evidence, the Tribunal should decide the petition afresh as per law. Parties to appear before the Tribunal on 29th July 2019.

(c) Since the matter of 2011 has been remanded, the learned Tribunal shall give priority to this matter and expedite the same. The Tribunal shall dispose of this matter as early as possible and not later than six months from the date of receipt of the writ.

(d) The statutory amount deposited by the appellant, in this Court, be refunded to the appellant.

(e) Record and proceedings be sent back immediately.

(Smt. Vibha Kankanwadi)
JUDGE

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