

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

FIRST APPEAL NO. 1604 OF 2008

The Divisional Manager, National
Insurance Company Limited,
Divisional Office No.-II, Paul
Commercial Complex, 5th floor, Ajni
Square, Wardha Road, Nagpur – 15.

.... APPELLANT

// VERSUS //

1. Govind s/o Laxman Dhage,
aged about 7 years, Occ. - Education,
being minor represented thorough
legal guardian Laxman s/o Haribhau
Dhage, aged about 45 years, Occ. -
Agriculturist, R/o Ridhora, Tq.
Balapur, Distt. Akola.
2. Gurdip Singh s/o Jogender Singh
Saini, Aged about – Major, Occ.-
Business, Satlaj Transport, Nagpur,
r/o Budhaji Nagar, Teka Naka,
Nagpur.
3. Jaswant Singh s/o Gurupath Singh
Gujar, aged about major, occ.- Driver,
r/o Budhaji Nagar, Teka Naka,
Nagpur.

.... RESPONDENTS

Shri B.B. Raipure, Advocate for Appellants.
All respondents are served.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 09/02/2021.

JUDGMENT :

Heard.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and order passed by M.A.C.T. Akola in Claim Petition M.A.C.P No. 95 of 2003. The Claims Tribunal has partly allowed the petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') filed by the Respondent no.1 through his guardian and awarded compensation of Rs.3,47,500/- inclusive of compensation paid under Section 140 of the M.V. Act, with interest at the rate of 6% per annum from the date of filing of petition till final realization.

3. The Appellant shall be hereinafter refereed to as 'Appellant-Insurance Company' and Respondent no.1 is referred to as 'Claimant'. On 24.10.2002, the Claimant Govind Dhage a child of 7 years of age and another pillion rider by name Bhagwan Dhage were proceeding on Bicycle of one Ashok Dhage. It is alleged that a Truck bearing No.CG-04-ZC-7885 came from the opposite side and dashed against the Bicycle as a result the pillion rider Bhagwan Dhage jumped from the Bicycle whereas the Claimant came under the wheels of the Truck and

sustained grievous injuries. Report of the accident was given by Bhagwan Dhage pursuant to which Crime No.176 of 2002 was registered against the respondent no. 3 for offences under Sections 279, 337, 338, 427, 184 of the Indian Penal Code.

4. It is the case of the Claimant that his right hand had to be amputated from the shoulder and that he had sustained other grievous injuries resulting in permanent disability of 70%. The Claimant claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle, which was insured by the Appellant-Insurance Company. The Claimant therefore filed petition under Section 166 of the M.V. Act claiming total compensation of Rs.4 lakhs with interest from the date of the accident.

5. The Appellant-Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. It is the case of the Appellant-Insurance Company that, accident was caused due to negligence of the rider of the Bicycle. The Appellant-Insurance Company further claimed that the compensation claimed was exorbitant and denied its liability to pay the compensation.

6. Upon appreciating the oral as well as documentary evidence on record, the Tribunal partly allowed the petition and awarded the compensation as stated above. This judgment and award is under challenge in the present appeal filed under Section 173 of the M.V. Act.

7. Heard Shri B.B. Raipure, learned Counsel for the Appellant/Insurance Company. He submits that the accident was caused due to rash and negligent act of the rider of the Bicycle for riding the Bicycle with two pillion riders. He further submits that the accident was caused as the pillion rider Bhagwan Dhage had jumped from the Bicycle. He has also raised a grievance that the said rider of the Bicycle has not been impleaded as a party to the proceedings. Learned Counsel for the Appellant further submits that the Tribunal has not assigned any reasons for awarding compensation of Rs.3,47,500/-. He submits that the Claimant had not examined the Doctor and as such Tribunal was not justified in awarding compensation of Rs.1,47,,500/- towards permanent disability. He therefore submits that the impugned judgment and award cannot be sustained.

8. The points falling for consideration are whether the

accident was caused due to rash and negligent driving of the driver of the truck and whether the compensation awarded by the Tribunal is 'just compensation'.

9. It is not in dispute that the Claimant, who was a young boy of 7 years of age had met with an accident involving truck bearing no. CG-04-ZC-7885 which was driven by the Respondent no.3. Applicant Witness no.1 Laxman Dhage, the father of the Claimant, has deposed that the truck was driven at a high speed and in rash and negligent manner. In his cross-examination, he has stated that his son was ahead of him and that the accident occurred in his presence. This witness has produced the F.I.R. at Exhibit 22, a perusal of which reveals that the crime was registered against the truck driver for driving the truck in rash and negligent manner and causing grievous injuries to the Claimant and others. The driver of the truck has not stepped into the witness box to explain the circumstance due to which the accident was caused. Under the circumstance, I am unable to accept the contention of the learned Counsel for the Appellant that the accident was caused due to rash and negligent act of the rider of the Bicycle.

10. As regards the quantum of compensation, the record

indicate that the Claimant who was a young boy of 7 year of age. He had sustained injuries in the said accident and his right hand had to be amputated below the shoulder. The Doctor has certified the permanent disablement to 70%.

11. The law with respect to the grant of compensation in injury cases is well settled. The injured is entitled for pecuniary as well as non-pecuniary damages. In the instant case, though the Claimant was admitted in the hospital and undergone medical treatment, the Claimants have not produced medical and other bills. The Tribunal has therefore, not awarded any compensation towards medical and other miscellaneous expenses. While assessing the compensation, the Tribunal has taken note of the fact that due to the disability suffered by the Claimant, he will not be able to get a good employment in future and this will affect his future prospects and upon considering the nature of the injury, the age of the Claimant, the Tribunal has awarded Rs.1,47,500/- towards future loss of earning capacity and Rs.2,00,000/- towards loss of amenities of life, inconvenience and hardship etc. Needless to state that the compensation awarded cannot in true sense, compensate for physical and mental suffering and personal deprivation and its impact on future life of this young child.

Taking into account all these relevant factors, compensation awarded by the Tribunal cannot be said to be exorbitant.

12. The Appeal is therefore has no merits and accordingly dismissed. Civil Application stands disposed of in view of the dismissal of the Appeal.

13. The amount deposited by the Appellant-Insurance Company along with interests, be forwarded to the Motor Accident Claims Tribunal, Akola with direction to pay the said amount along with interests accrued thereon to the Claimant Govind s/o Laxman Dhage.

JUDGE

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