

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

**FIRST APPEAL NO. 840 OF 2012**

Anil Rokadaji Kamble,  
age 26 years, Occ. At present Nil,  
R/o Panchshil Nagar, Washim by pass, Akola,  
District Akola.

...APPELLANT

**Versus**

1. Shriram Ganpat Bherane,  
age adult, Occ. Driver,  
R/o Rajanda, Tq. Barshitakli, Akola.
2. Pradeep Kashiram Wankhede,  
age adult, Occ. Owner of Minidor,  
R/o Ward No.5, Patur, Tq. Patur, Dist. Akola.
3. The Divisional Manager,  
United India Insurance Co. Ltd.  
Old Cotton Market, Akola, Dist. Akola.

...RESPONDENTS

S/Shri A.S. Londhe and S.N. Ingle, Advocates for the appellant.  
Shri A.R. Bhuibhar, Advocate for respondent Nos.1 and 2.  
Shri M.M. Kalar, Advocate for respondent No.3.

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**CORAM : PUSHPA V. GANEDIWALA, J.**  
**DATED : AUGUST 21, 2021.**

**ORAL JUDGMENT :**

This is the claimant's Appeal filed against the judgment and order dated 10/03/2011 passed by the Member, Motor Accident Claims Tribunal, Akola in M.A.C.P. No.

310/2008, whereby the Claim Petition filed by the claimant stood dismissed.

The facts of the case, in nutshell, are as under :

2. On 08/09/2007, at about 5:30 pm, when the claimant was going on a motorcycle bearing No. MH-30-L-7123 from Kamala Nagar towards his shop situated at Panchsheel Nagar, Washim Bypass, Akola, one minidor bearing No. MH-30-E-6843 came from back side, which was rashly driven by respondent No.1, and gave dash to the motorcycle due to which the claimant sustained injuries to his right ankle. That the appellant was pillion riding.

3. The First Information Report came to be lodged with the Old City Police Station, Akola on the same day against the driver of the minidor for the offence punishable under Sections 297, 327 and 427 of the Indian Penal Code.

4. It is stated that the appellant, in the aforesaid accident, suffered partial permanent disability to the tune of 30% and working capacity of 100%. That the appellant was a wrestler and had participated in number of competitions and won prizes. That the age of the appellant, at the relevant time, was 25 years, and he had to remain as a indoor patient for 34 days and was required to spend Rs.1,50,000/- on his treatment. The appellant claimed Rs.8,00,000/- towards compensation. Respondent Nos.1 and 2 are the driver and owner of the offending vehicle respectively, while respondent No.3 is the insurer of the vehicle.

5. Respondent Nos.1 and 2, in their joint written statement, opposed the claim and denied the contents in the petition, thereby denied their liability to pay compensation. They specifically pleaded that respondent No.1 was driving the vehicle very slowly and carefully. That he had just started the vehicle and within 300 feet away from the starting point, the claimant came fast from Kamala Nagar side on the Akola-Washim road and due this sudden arrival, it was stated that

respondent No.1 could not avoid dash to the rear side of the vehicle of the claimant. That respondent No.1 denied any negligence on his part, and it is alleged that due to the rash and negligent driving of the claimant, who approached the main highway running Akola to Washim, the aforesaid accident occurred.

6. Respondent No.3 - Insurance Company, in its separate written statement (Exh.18), denied the contents in the Claim Petition and the occurrence of the accident. The Insurance Company also pleaded statutory defences as are available to it under Section 149(2) of the Motor Vehicles Act.

7. On the basis of pleadings of the parties, the Tribunal framed necessary issues and recorded evidence as adduced by the parties. The claimant examined himself at Exh.25 and brought on record the police documents and medical papers. Two more witnesses were examined in support of his claim. The respondents preferred not to examine any witness.

8. The Tribunal, on the basis of oral and documentary evidence, rejected the claim of the claimant mainly on the ground that there was head on collision between the two vehicles, and considering the contents in the FIR and spot panchanama, in the opinion of the Tribunal, no negligence on part of the driver of minidor can be inferred. This judgment is impugned in this Appeal.

9. I have heard S/Shri Londhe, Bhuihar and Kalar, learned counsel for the respective parties. The following point arose for consideration of this Court :

*“Whether the claimant is entitled to receive compensation amount for 30% permanent disability suffered by him due to the motor accident involving minidor bearing No. MH-30-E-6843 ?”*

10. Shri Londhe, learned counsel for the appellant, strongly relied on the oral testimony of the injured and submitted that in his testimony, he has clearly stated that he

was coming from Kamala Nagar to his shop situated at the Akola-Washim road and the minidor was coming from Akola side, and therefore, the conclusion arrived at by the Tribunal for head on collision is misconceived. He further submitted that had both the vehicles were coming from opposite direction, there could not have been damage to the minidor from front side and the motorcycle from back side. With regard to compensation, the learned counsel, on instructions, submits that the appellant would be satisfied with the compensation already calculated by the Tribunal.

11. On the contrary, Shri Bhuibhar, learned counsel for respondent Nos.1 and 2 and Shri Kalar, learned counsel for respondent No.3, while supporting the impugned judgment and order, jointly submit that the Tribunal has correctly arrived at conclusion that there was no negligence on part of the driver of the minidor and thus prayed for dismissing the Appeal.

12. I have considered the submissions put forth on behalf of both the sides. I have also perused the record with the

assistance of learned both the counsel.

13. At the outset, the occurrence of the accident and involvement of the minor is not disputed. It is also not disputed that the said vehicle was insured with respondent No.3, and at the relevant time, the license possessed by respondent No.1 is valid.

14. With regard to occurrence of the accident, the claimant in his examination-in-chief, had stated as under :

*“That on 8.09.2007 at about 17.30hrs when the I was going on the Motor Cycle bearing No.MH-30-L-7123 from Kamlanagar to the shop at Panchashil Nagar Washim By pass Akola, one Mini Door bearing no. MH-30-E-6843 come from back side i.e. from Akola side and going to wards Patur in very high speed, driving in rash and negligent manner and gave dash to the Motor Cycle. Due to that dash I sustained injuries to the Right ankle and Right ankle and Right ankle is badly damaged and sustained injuries all over the body. The accident took*

*place due to sole negligence of driver of the Mini Door.”*

This witness is cross-examined by the learned counsel for the Insurance Company wherein he had stated that he cannot say as to how far the minidor in question was behind his motorcycle. However, he had stated that it was not in his front. He had denied the suggestion that the minidor and the motorcycle was coming from opposite direction. The tenor of his cross-examination would suggest that both the vehicles were not heading from opposite direction.

15. Respondent Nos.1 and 2, in their written statement, stated that respondent No.1 had just started the vehicle, and within 300 feet away from the starting point, the claimant came fast from Kamala Nagar side on Akola-Washim road. That because of the sudden arrival of the vehicle in a fast speed, respondent No.1 could not avoid dash to the rear side of the vehicle of the claimant, though he tried his level best to control his vehicle.

A perusal of record would reveal that respondent Nos.1 and 2 did not to enter in the witness box. In such a case, there is no difficulty in considering their pleadings which are in the nature of admissions, favoring the claimant's case.

16. From the aforesaid specific pleadings of respondent Nos.1 and 2, it is clear that the claimant was coming from Kamala Nagar side on the Akola-Washim road. This is also the case of the claimant that he was coming from Kamala Nagar side on the Akola-Washim road, and therefore, the conclusion arrived at by the Tribunal that both the vehicles were coming from opposite directions and there was head on collision, is erroneous and cannot be sustained. Had both the vehicles were coming from opposite direction, there could not be damage to the minidor from front side and the motorcycle from back side. Respondent No.1 – driver of the minidor, in his written statement, himself has admitted that he could not avoid dash to the rear side of the vehicle of the claimant, which itself shows that the minidor was in a high speed and even though the claimant was approaching the main highway running from

Akola to Washim, the driver of the minidor did not take care to reduce the speed of the minidor, and therefore, it could not be said that the driver of the minidor was not negligent.

17. Even though the Tribunal recorded negative finding for entitlement of the claimant to receive compensation, the Tribunal decided the issue of assessment of compensation to which the claimant would have been entitled otherwise. The Tribunal on the basis of material on record calculated the compensation of Rs.3,32,135/- which includes compensation towards the heads - loss of future income, loss of income during the period of treatment, medical expenses, special diet and pain and suffering. The said amount, as calculated by the Tribunal, appears to be just and fair considering the facts of the present case. The learned counsel for the appellant has no grievance with the amount of compensation as calculated by the Tribunal. Even this Court finds the said compensation as just and fair, and therefore, no interference is warranted.

18. For the reasons aforestated, the finding recorded by

the Tribunal about negligence of the appellant is erroneous and deserves to be set aside. Hence, the following order :

**ORDER**

- i. The Appeal is allowed.
- ii. The judgment and order dated 10/03/2011 passed by the Member, Motor Accident Claims Tribunal, Akola in M.A.C.P No. 310/2008 is quashed and set aside.
- iii. Respondent Nos.1 to 3 are directed to deposit Rs.3,32,135/- including No Fault Liability with interest @ 7.5% per annum from the date of petition till its realisation with the Registry of this Court within a period of twelve weeks from today. Thereafter, the appellant shall be entitled to withdraw the said amount, after deducting the deficit Court fee.
- iv. The Appeal stands allowed and disposed of. No costs.

**JUDGE**

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Sumit

Digitally signed by SUMIT CHETAN  
AGRAWAL  
Signing Date: 13.10.2022 14:46