

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

978 FIRST APPEAL NO.2647 OF 2018

**SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS
BRANCH MANAGER AND ANR
VERSUS
KAILASH SATISH PATIL AND ANR**

Mr. S. G. Chapalgaonkar, Advocate for the
appellants
Mr. S. V. Suryawanshi, Advocate for the
appellant

CORAM : S. G. DIGE, J.

DATE : 02nd August, 2022

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1. The challenge in this appeal is judgment and award dated 07-08-2017, passed by the Motor Accident Claim Tribunal, Mukhed in MACP No.23/2014. The appellants-original respondent Nos.2 and 3 have preferred the present appeal.

2. Brief facts of the case are as follows:

a] On 29-08-2013, the original claimant-respondent No.1 alongwith family members were sitting below a tree at Ladga bus stand for going towards village Sullali, Tq. Udgir, Dist. Latur. At the relevant time, a truck bearing registration No. MH-24-J-7488 was going towards Mukhed. Said truck suddenly came to the side of the claimant-Kailash Patil and dashed him. On account of said accident, the claimant suffered injuries.

b] The claimant filed claim petition before the Motor Accident Claim Tribunal, Mukhed (for short 'the tribunal') claiming compensation.

c] The tribunal after considering the evidence led before the tribunal and hearing the parties, has granted compensation of Rs.3,85,441/-. Against the said judgment and

order this appeal.

3. It is the contention of the learned counsel for the appellant that the tribunal failed to appreciate the evidence on record in its proper perspective. Though the claimant had filed certificate of so called permanent disablement, the author of certificate i.e. Medical Officer is not examined before the tribunal in absence of cross-examination of the doctor. Mere certificate filed on record cannot be relied as proof of permanent disablement. The learned counsel for the appellant relied on Raj Kumar Vs Ajay Kumar reported in 2011(1)SCC 343.

4. It is the contention of the learned counsel for the respondents that the tribunal has passed the judgment and award after considering all the aspects. The disability

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certificate issued to the claimant by In-charge Medical Officer of the Government Hospital at Nanded. The said officer has opined that the claimant has become 28% permanent disable due to injuries mentioned in the said certificate. The learned counsel for the respondents relied on Master Mallikarjun Vs Divisional Manager, the National Insurance Company ltd and another reported in AIR 2014 SCC 736.

5. I have heard both the learned counsels. Perused the judgment and order passed by the tribunal.

6. The issue involved in this appeal is in respect of compensation given to the claimant on the basis of disability. The tribunal has granted the compensation on the basis of judgment of the Hon'ble Apex Court in the matter of Master Mallikarjun (supra). In

paragraph 12 of this judgment a formula of calculating the amount of compensation is given in cases where the children who suffers permanent disability. In this paragraph it is observed that if the disability above 10% and up to 30% to the whole body Rs. 3 lakhs; upto 60% Rs. 4 Lakhs; upto 90% Rs. 5 Lakhs and above 90% it should be Rs.6 lakhs. In the present case disability is 28%.

7. The disability certificate and the injury certificate are produced on record. Medico Legal Certificate is at Exh.28. It shows claimant has received one grievous and two simple injuries. Exh.29 & 30 are discharge cards which are issued by SGGSM Hospital i.e. Government Hospital at Nanded. This document shows that the claimant was admitted in the said hospital on 29-08-2013 and discharged on 06-09-2013 and in another hospital he was

admitted on 09-09-2013 and discharged on 16-09-2013. The details of claimant's injuries and his treatment are mentioned in these documents. Exh.45 is certificate issued by In-charge Medical Officer of the Government Hospital, Nanded. Said officer has opined that the claimant has become 28% disable due to injuries mentioned in the said certificate. The medical certificate produced on record shows that claimant had taken treatment for injuries sustained by him due to accident. He was 4 $\frac{1}{2}$ years old at the time of accident. Exh.34,35 and 41 collectively are medical expenditure bills of Rs.35,441/-. This amount is considered by the tribunal.

8. In my view, all the certificates show that the claimant had sustained injuries. Admittedly, there was dash to the claimant by the offending truck and he was injured in the

said accident. The medical papers produced on record show that there was fracture/injuries. The claimant had sustained fracture/injuries and accordingly certificate is issued by the In-charge of Government Hospital Authorities. This medical certificate is issued by Government Authority. The Hon'ble Apex Court in the case of Master Mallikarjun (supra) observed that though it is difficult to have a accurate assessment of the compensation, in the case of such suffering disability on account of motor vehicle accident have recorded relevant factors. The claimant is entitled for compensation. In the present case, the claimant has suffered 28% disability if it is reduced then also, the claimant is entitled for compensation.

9. I have gone through the case laws of *Raj Kumar* (supra) cited by the learned counsel

for the appellants.

10. The facts of cited case and present case are different as in the case of Master Mallikarjun (supra). The Hon'ble Apex Court has laid down the criteria to award the compensation in respect of injury caused to the children. Hence, facts of the case cited by the learned counsel for the appellant are different from the case at hand.

11. In view of the above, the appeal stands dismissed. No order as to costs.

[S. G. DIGE, J.]