

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

FIRST APPEAL NO. 911 OF 2004

Dilip s/o. Vishwanath Mane,
Age 25 years, Occ : Driver,
R/o. Milind Nagar, Latur.

.. APPELLANT
[Original claimant]

VERSUS

- 1] Mohamad s/o. Rajidden Mohamadmiya
Mohiddin, age 45 years, Occ : Driver
R/o. Ismalpura, Jakatyal (Bach No.2638),
Jaktyal Depo, Dist : Karimnagar (A.P.)
Andhra Pradesh
[Appeal abated against R.No.1 vide Registrar's
order dtd.21.03.2006]
- 2] Andhara Pradesh State R.T.C.
Through Depo Controlar,
Jaktayal Depo, A.P. (A.P./10-Z-6292)
- 3] Laxman s/o. Nivratirao Reddy,
Age 53 years, Occ : Contractor,
R/o. Latur, Tq. & Dist. Latur.
- 4] United India Insurance
Co. Ltd.
Through its Branch Manager,
Main Road, Latur.

.. RESPONDENTS
[Ori.Res.Nos.1 to 4]

...

Mr.B.M.Dhanure, Advocate holding for Mr.S.N.Morampalle,
Advocate for the appellant.
Mr.S.V.Kulkarni, Advocate for respondent no.4.

...

CORAM : S.G.DIGE, J.

DATE : 19.10.2022

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Additional District Judge & Ex-Officio Member, Motor Accident Claims Tribunal, Latur [for short 'the Tribunal'], this appeal is preferred by the appellant – original claimant [for short 'claimant'].

2] It is the contention of the learned counsel for the appellant-claimant that the Tribunal has dismissed the claim petition of the claimant on the ground that the said accident was occurred due to the negligence of the claimant. At the time of dismissing the claim petition, the Tribunal has not properly considered the evidence on record. The spot panchnama produced on record shows that dash was given by respondent no.1 i.e. the driver of the bus but the Tribunal has erroneously concluded that it was the negligence of the claimant. In the said accident, the claimant has suffered 40% permanent disability. He was the

driver of the tipper and after the accident, he is unable to do any work. He has lost his job. But the Tribunal wrongly concluded that there was a negligence of the claimant and dismissed the claim petition. Hence, requested to allow the appeal.

3] It is the contention of the learned counsel for respondent no.4 that the accident was occurred due to sole negligence of the claimant. The Tribunal has rightly held that there was negligence of the claimant. The spot panchnama, which was prepared after the accident, shows that the accident was occurred due to negligence of the claimant. Moreover, the offence was registered against the claimant. It proves that there was negligence of the claimant. The claimant failed to prove 40% permanent disability caused to him, hence, requested to dismiss the appeal.

4] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is whether the accident was occurred

due to sole negligence of the claimant, who was driving the tipper. It has come on record that on 23rd August, 2000, the claimant was driving the tipper, he was coming from Nanded to Latur. At about 4.30, he reached in the vicinity of village Kolpa, Taluka and District Latur. At that time S.T.bus from Andhra Pradesh came from the opposite direction in a very rash and negligence manner, the driver of the S.T. bus was driving the vehicle on wrong side and gave dash against the tipper of the claimant. The offence was registered against the claimant. It is the contention of the learned counsel for the claimant that after accident the claimant sustained multiplier injuries, hence, he was admitted in the hospital due to which he could not file complaint against the driver of the bus. The driver of bus filed false complaint against the claimant. The Tribunal has held that the accident was occurred due to sole negligence of the claimant. The claimant has examined himself at Exh. 36. He has stated that S.T. bus driver gave dash to the tipper which he was driving. He sustained injuries due to the said accident. He was admitted in the hospital for

treatment. In the cross examination, he admitted that cleaner was there in his tipper, he did not receive any injury. To prove the negligence of the claimant, respondent examined driver of the S.T. bus Shri Mohamad Mohamadiya at Exh.45. He has stated that when he was going towards Nanded, he noticed one tipper coming from opposite direction in zigzag manner. He took his vehicle to the side of the road and made it stationary. The said tipper came from opposite direction and gave dash against right side headlight of his bus. After receiving dash of tipper, he filed complaint against the claimant. Due to the said accident he received injury. From the evidence of the claimant and the bus driver, it appears that both are blaming each other for occurrence of the accident. The spot panchnama is at Exh. 38. It shows that both vehicles were standing in the middle of the road and S.T. bus had given dash to the cabin of tipper. Due to the said dash, the cabin of the said tipper was pressed inside. It appears from the evidence of the S.T. bus driver that when he noticed that the tipper is coming from opposite direction in zigzag manner, he took the bus on the

side of the road and stationed it. But the spot panchanama falsifies the evidence of S.T. bus driver. The spot panchanama shows that the bus was standing in the middle of the road and dash was given by S.T. bus to the tipper. Considering the spot panchnama, it appears that both vehicles were standing in the middle of the road and damage was caused to both the vehicles but more damage was caused to the tipper, which the claimant was driving. In my view, from the evidence on record it appears that there was contributory negligence of driver of both the vehicles. The spot panchanama shows that dash was given by S.T. bus driver, hence, I am considering 60% negligence of S.T. bus driver and 40% negligence of the claimant i.e. the tipper driver. Hence, the liability of the accident is 60% and 40%.

5] It has come on record that the claimant was driver and he was getting Rs.3000/- per month salary. I am considering his monthly salary of Rs.3000/-. He was 25 years old and he has suffered 40% permanent disability.

Dr. Shekhar Garad, who has treated him, has examined by the claimant. His evidence is at Exh.41. This witness stated that the claimant has suffered 40% permanent disability and he has issued disability certificate. Nothing elicited in his cross examination.

6] The monthly salary of the appellant-claimant is Rs.3000/-. Future prospects @ 40% of the salary comes to Rs.1200/-. Disability is 40%, which comes to Rs.1680/-. Therefore, monthly income comes to Rs.2520/- [Rs.3,000/- - Rs.1680/- = Rs.2520/-]. Annual income come to Rs.30,240/- [Rs.2520 x 12 = Rs.30240/-]. Claimant's age was 25 years at the time of accident, hence, as per the view of the Apex Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation & another** reported in [2009] 6 SCC 121, 18 is proper multiplier. Total amount comes to Rs.5,44,320/- [Rs.30,240 x 18 = 5,44,320/-]. The appellant-claimant is entitled for 60% amount, which comes to Rs.3,26,592/-. Record shows that the hospital and medical expenses are of Rs.18,300/-, I am considering this

amount as medical expenses. The claimant was admitted in hospital for one month. Hence, I am considering Rs.5,000/- as attendance charges, Rs.5000/- for diet charges and Rs.25,000/- for pain and suffering. Total amount of compensation comes to Rs.3,79,892/-.

7] In view of the above, the appellant-claimant is entitled for the following compensation :

Monthly income	Rs.3000/-
40% future prospects $\text{Rs.3000/-} + \text{Rs.1200} = \text{Rs.4200/-}$	Rs.4200/-
40% disability $\text{Rs.4200} - 1680/- = \text{Rs.2520}$	Rs.2520/-
Annual income $\text{Rs.2520} \times 12 = \text{Rs.30,240}$	Rs.30,240/-
The appellant was 25 years age. As per the view of the Apex Court in the case of Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation & another reported in [2009] 6 SCC 121, 18 is proper multiplier. $\text{Rs.30,240} \times 18 = 5,44,320$	Rs.5,44,320/-
Appellant is entitled to 60% amount from the compensation amount.	Rs.3,26,592/-
Hospitalization and medical expenses.	Rs.18,300/-

Compensation for pain and suffering	Rs.25,000/-
Attendant charges	Rs.5,000/-
Diet charges	Rs.5,000/-
The appellant is entitled for total compensation along with interest @ 6% from the date of filing of the petition till its realization.	Rs.3,79,892/-

8] In view of the above, I pass the following order :-

ORDER

i] Appeal is partly allowed.

ii] The appellant-claimant is entitled for compensation of Rs.3,79,892/- along with interest @ 6% from the date of filing of the petition till its realization.

iii] The respondents jointly and severally shall deposit the amount of Rs.3,79,892/- within eight weeks along with accrued interest thereon.

iv] The appellant-claimant is permitted to withdraw the deposited amount.

v] Appeal is disposed of accordingly.

**[S.G.DIGE]
JUDGE**