

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

922. FIRST APPEAL NO.2961 OF 2008

Mastan Shah s/o. Mahemood Shah,
Age : 40 yrs, Occ : Driver,
R/o. Nizami Colony, Nanded,
Tq. & Dist. Nanded.

.. **APPELLANT**
[Original Claimant]

VERSUS

1. Shaikh Mahemood s/o. Shaikh Ibrahim,
age : 37 yrs, Occ : Business,
R/o. Sainagar, Nanded,
Tq. & Dist. Nanded.
2. Aref Khan s/o. Daulat Khan,
Age : 25 yrs., Occu : Business,
R/o. As above.

As per Registrar Order dt.17.11.09
dismissed against respondent Nos.1 & 2.

3. National Insurance Co. Ltd.
Through its Branch Manager,
Branch Office at Nanded.
4. Ramprasad s/o. Bagmal Modi,
Age : 32 Yrs. Occ : Business,
R/o. Modi Cement, Old Mondha,
Nanded, Tq. & Dist. Nanded.

As per Registrar Order dt.17.11.09
abated against respondent no.4.

5. The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Branch at Nanded.

.. **RESPONDENTS**

...

Mr.S.V.Mundhe, Advocate for the appellant.

Mr.A.V.Soman, Advocate holding for Mr.D.V.Soman,
Advocate for respondent no.3.

Mr.A.G.Kanade, Advocate for respondent no.5.

...

CORAM : S.G.DIGE, J.

DATE : 26.07.2022

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Nanded, the appellant - original claimant has preferred this appeal.

Brief facts of the case are as under:

2] The appellant is a driver, on 1st March, 1996, his truck bearing No. AP-25/T-2414 was proceeding towards Nanded. His truck was in slow speed. Another truck bearing registration No.ABJ-877 was going ahead of the appellant's truck, while the truck vehicle No. ABJ-877 and opposite truck vehicle No. MH-26/7084 were crossing each other. The driver of truck vehicle No. MH-26/7084

could not control his truck vehicle and suddenly applied breaks, therefore, his truck brushed against the rear portion of truck vehicle No. ABJ-877 and further lost control, the rubber bundles loaded in truck No. MH-26/7084 were not properly fastened and stacked, hence some rubber bundles were thrown on the road and thereafter the truck vehicle no. MH-26/7084 gave dash to the appellant's vehicle. On account of such sudden dash to the appellant's vehicle, the appellant sustained abdominal injury.

3] The appellant filed claim petition before the Motor Accident Claims Tribunal, Nanded [for short 'the Tribunal'] for getting compensation. After considering the evidence on record and after hearing the parties, the Tribunal has passed the judgment and order. It is under challenge.

4] It is the contention of the learned counsel for the appellant that the appellant has suffered abdominal injury. He has become permanently disabled but this fact is not considered by the Tribunal. There was no negligence of

the appellant but the false complaint is filed against the appellant. Without considering this fact, the Tribunal has considered 1/3rd negligence of the appellant, which is not proper, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent no.3 that the Tribunal has considered all the aspects and granted compensation to the appellant. The learned counsel further submits that the First Information Report is lodged against the appellant for the negligence and the Tribunal has considered 1/3rd negligence of the appellant and awarded the amount. The appellant failed to give evidence regarding his salary before the Tribunal, hence, compensation awarded by the Tribunal is just and proper.

6] It is the contention of the learned counsel for respondent no.5 that claim against respondent no.4 is abated unless legal heirs of respondent no.4 is taken on record, liability cannot be fixed on respondent no.5. The learned counsel further submits that the judgment and

award passed by the learned Tribunal is proper and valid. Appeal against respondent nos.1 and 2 is dismissed as steps are not taken, hence, respondent no.5 is not liable to pay compensation.

7] I have heard all learned counsel. Perused the judgment and order passed by the Tribunal. The appellant is seeking enhancement of compensation on the ground that proper compensation is not awarded by the Tribunal. The Tribunal has considered amount of Rs.10,000/- toward loss of working days and income for period about 6 months and Rs.10,000/- towards pain and agony. In my view, medical report shows that the appellant was injured and there were injuries to the stomach of the appellant. From the evidence of Md.Abdul Rahman Md.Murtuza it reveals that the appellant is unable to do hard work. His evidence further shows that the appellant was again treated for the period 17th June, 1996 till 20th June, 1996. Hence, future treatment was not considered by the Tribunal. Hence, Rs.5,000/- is added under head of future treatment, pain and agony.

Appellant was driver and sole bread earner of the family and he was hospitalized for 12 days. This fact was not considered by the learned Tribunal and awarded Rs.10,000/- for loss of working days, it should be Rs.15,000/-.

8] In respect of contention of the learned counsel for respondent no.5 that as appeal against respondent nos.1 and 2 is dismissed, respondent no.5 is not liable to pay compensation. The Tribunal has fastened liability on respondent nos.1 to 3 and 5, respondent nos.3 and 5 are the insurance company. There is contractual liability between respondent nos.1 and 2 and respondent no.5. At the time of accident vehicle of respondent nos.1 and 2 was insured with respondent no.5 and this fact is not denied by respondent no.5. Hence, though appeal is dismissed against respondent nos. 1 and 2 for want of service, liability on respondent no. 5 cannot be exonerated. In view of above, I pass the following order :

ORDER

i] Appeal is partly allowed.

ii] The amount of Rs.10,000/- is enhanced with interest @ Rs. 6% p.a. on enhanced amount from the date of filing of the application till realization of the amount.

iii] The appellant is entitled to withdraw the amount.

[S.G.DIGE]
JUDGE

DDC