

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

977 FIRST APPEAL NO.2211 OF 2018

**SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS
BRANCH MANAGER AND ANR
VERSUS
TRUPTI SATISH PATIL U/G OF HER FATHER SATISH
NARAYAN 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

P. C.

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.25/2014. 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-Trupti Patil and dashed her. 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.3,52,250/-. 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

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 20% 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 20%.

7. The disability certificate and the injury certificate are produced on record. Medico Legal Certificate is at Exh.31. Exh.36 is discharge card which is 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 01-09-2013. The details of claimant's injuries and her treatment are mentioned in this document. Exh.35 is

certificate issued by Udaygiri Hospital, Udgir. This certificate shows that claimant had suffered a fracture injuries. Exh.38 is certificate issued by In-charge Medical Officer of the Government Hospital at Nanded. Said officer has opined that the claimant has become 20% disable due to injuries mentioned in the said certificate. The medical certificates produced on record shows that claimant had taken treatment for injuries sustained by her due to accident. She was 7 years old at the time of accident.

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 she was injured in the said accident. The medical papers produced on record show that there was fracture. The claimant had sustained fracture 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 an 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 20% disability if it is reduced to 10% then also the claimant is entitled for compensation as per the view taken by the Hon'ble Apex Court.

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.]