

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.145 OF 2005

Sandeep Krishna Jondhale)
Age : 18 years, Occu: Education)
R/o. Abdullat, Tal.Shirol,)
District-Kolhapur.)
(Original Applicant)
...Appellant

Versus

1. Narayan Laxman Koli)
Major, Occu: Tractor owner,)
R/o. Sangliwadi, Tal. Miraj,)
District-Sangli.)
2. The New India Insurance Co.Ltd.,)
Station Road, Kokhapur.)
(Original Opponents)
...Respondents

Mr.Yuvraj P. Narvankar, for the Appellant.

Mr.Indrajeet Kulkarni a/w Mr.Devendranath Joshi and Ms.Yogita
S. Tembe, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 23 DECEMBER 2022

JUDGMENT :-

1. This Appeal is preferred by the Appellant-Original
Claimant for enhancement of compensation.

2. The learned counsel for the Appellant submit that the Appellant met with an accident on 14 December 1994 at 4.00 p.m., in front of his school, where he was standing on kacha road on extreme right side of the road for urination, at the relevant time the Tractor bearing No.MHM-4266 with trolley loaded with sugarcane came in high speed and gave dash to the Applicant due to which he sustained injuries and got permanent disability upto 40%.

3. The learned counsel for the Appellant further submit that the Tribunal has not considered the 40% disability of the Appellant and has awarded compensation of Rs.1 Lakh out of which Rs.50,000/- is deducted as contributory negligence.

4. The Applicant at the time of accident was 9 years old. Due to said accident he is unable to do any work. He has suffered permanent disability. Hence, requested for enhancement of the compensation.

5. The learned counsel for Respondent No.2 submits that the accident did not take place because of the negligence of the driver of the offending tractor. The said accident took place while the Appellant was trying to extract the sugarcane which was loaded in the trolley, he lost his balance and came under the wheels of trolley. But to get compensation the Appellant has

come with the case that he was hit by the Tractor. Hence, requested to dismiss the Appeal.

6. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal.

7. The Appellant is claiming enhancement of compensation.

8. It is contention of the learned counsel for the Appellant that the accident was occurred due to dash given by the offending tractor when the Appellant was standing opposite the road. Whereas it is contention of the learned counsel for the Respondent that the accident occurred when the Appellant tried to extract the sugarcane from the trolley. It is necessary to see the documents produced on record. The report of accident recorded in the Police Station is at Exhibit-48 it states that the Tractor was stopped near the school, at that time, one boy came running and told that a boy has come under the wheel while pulling sugarcane from the trolley.

9. The Tribunal has observed that said accident was not occurred due to sole negligence of the tractor driver but there was negligence of the Appellant also. On that basis, the Tribunal has considered 50% contributing negligence of the Appellant and

50% contributing negligence of the driver of the tractor. I do not find any infirmity in it. The Appeal is devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.

(S.G. DIGE, J.)