

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

FIRST APPEAL NO. 274 OF 2012

Shankar s/o. Baburao Kadam,
Age 31 years, Occ. Profession & Agriculture,
R/o. Vasant Nagar, Nanded,
Dist. Nanded. Since deceased through LRs

1] Sangita Wd/o. Shankar Kadam,
Age 40 : Off Household since deceased through
LRs i.e. appellant Nos. 2 and 3.

2] Mahesh S/o. Shankar Kadam,
Age 15 years, Occ. Household,

3] Rutuja D/o. Shankar Kadam
Age 9 years, Occ. Education

[Appellant Nos. 2 and 3 are minors under guardianship of
their grand-mother Appellant No.4]

4] Saraswati W/o. Baburao Kadam,
Age 65 years, Occ. Household,

All R/o. Kondha, Tq. Ardhapur,
Dist. Nanded.

... APPELLANTS.

VERSUS

1] Kobraji s/o. Ramrao Barse,
Age Major, Occ. Business,
R/o. Barasgaon Tq. Ardhapur,
Dist. Nanded.

2] National Insurance Company Ltd.,
Through its Manager,
Branch at Vazirabad,
Nanded.

... RESPONDENTS.

Mr. M.V. Ghatge, Advocate for appellants
Mr. A.B. Gatne, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 2ND AUGUST, 2023
PRONOUNCED ON : 18TH AUGUST, 2023.**

JUDGMENT :-

The claimant (since deceased) through his legal representatives is before this Court, thereby challenging the judgment and award dated 2.11.2011 passed in MACP No. 341 of 2008 by the M.A.C.T. Nanded. The claimant had approached the Tribunal under Section 166 of the Motor Vehicles Act raising a claim for compensation of Rs. 15 Lakhs from the owner and insurer of the car bearing Registration No. MH-26/ N-448. The claimant contends that on 5.1.2008, while he was riding the motorcycle, a Maruti car bearing registration No. MH-26/ N-448 dashed the motorcycle from rear side. He fell down and sustained grievous injuries on forehead, left eye and other body parts. According to claimants, the accident is attributable for rash and negligent driving of car driver. The claimant further contends that immediately after the accident, he was admitted to SGGS Hospital at Nanded. Thereafter, he was shifted to neuro-surgeon Dr. Raturaj Jadhav, where he was treated as indoor patient for 15 days and discharged on 25.1.2008. He was required to continue the follow up treatment. The claimant further contends that he suffered brain hemorrhage resulting into loss of his memory and mental ability. He is an advocate for profession. His professional ability has been affected. He incurred expenditure of Rs. 3,87,000/- on medical treatment. He suffered permanent disablement.

2. The claim was contested by the respondents alleging negligence against the claimant/motorcycle rider. The respondent No.2 insurer took statutory defence that driver of the insured car had no valid driving licence. Further , a false and fictitious claim has been lodged by

the claimant, since there is inordinate delay in reporting the accident to the police.

3. The Tribunal, after evaluation of the pleadings and material on record, concluded that the accident occurred due to contributory negligence of the claimant and car driver and awarded compensation of Rs. 2,82,900/- alongwith interest in favor of the claimant.

4. Aggrieved by the assessment of compensation and the finding on the point of negligence, appellant/claimant approached this Court. During pendency of the appeal, he died. LRs of deceased are prosecuting this appeal.

5. Mr. Ghadge, learned advocate for the appellant vehemently submitted that the Tribunal has wrongly recorded finding of negligence merely on observation that the claimant had no driving licence. He would further submit that the claimant was a professional advocate. He lost his earning capacity on account of permanent disablement. The claimant relied upon the evidence of Dr. Raturaj Jadhav, who testified that the claimant was treated by him for cerebral contusion with right temporal subdural hematoma. The claimant may suffer epilepsy and loss of memory. The claimant also relied upon the evidence of PW-2 Chandrakant Ingle, a practicing advocate, who testified that the claimant had suffered fits and he took him to hospital from Court on such incident dated 8.1.2010.

6. Mr. Ghadge, would further submit that merely because the claimant had no driving licence, the contributory negligence could not have been assumed. Mr. Ghadge would further submit that the evidence of Dr. Jadhav clearly shows that the claimant had suffered 41% permanent disability as certified as per Exh.50. The tribunal ought to

have accepted the case regarding income of the deceased and awarded just compensation. He would submit that even agricultural income of the deceased could have been accepted in view of the 7 x 12 extracts placed at Exh. 54 and 60.

7. Per contra, Mr. A.B. Gatne, learned advocate for the insurance company submits that the FIR has been lodged after inordinate delay. The true version of the accident is not before the Court. He would further submit that claimant was not wearing head guard/helmet at the time of the accident. Further, he had no valid driving licence as observed by the Tribunal. Hence, the conclusion of contributory negligence as arrived by the tribunal cannot be faulted. He would further submit that the Disability Certificate Exh.50 has been issued by the Government Medical College and Hospital (SGGS). However, the author of the certificate is not examined before the Tribunal. No sanctity can be attached to the unproved certificate. He would submit that nothing is placed on record to show the loss of earning to the claimant on account of alleged disablement. Therefore, he supports the award passed by the Tribunal.

8. Having considered the submissions advanced, apparently, the insurer has not filed appeal challenging the award. The contentious issue arises for consideration in this appeal is regarding finding on the point of negligence and assessment of compensation. The claimant was a practicing advocate when he suffered the accident. He was riding the motorcycle at the time of accident. The FIR, spot panchanama and the oral evidence of the claimant sufficiently establish negligence against the car driver. The Tribunal, observed in para No.14 of the judgment that it was imperative on the part of the claimant to place on record the driving licence authorizing him to drive his motorcycle but he failed. It is further observed that the adverse inference can be drawn against him that he

was not holding valid driving licence and therefore, the act of the claimant would come within the purview of contributory negligence.

9. It is difficult to accede to such conclusions of the tribunal. The contributory negligence can be assessed only on the basis of the act of rash and negligent driving on the part of the rider. Non-holding of the driving licence may be an offence under the Motor Vehicles Act but that ipso-facto would not be sufficient to hold that the unlicensed driver has contributed in the cause of accident. Such assumption by the Tribunal is neither backed by any statutory provision or nor has espoused by higher courts. Conversely, the Supreme Court in the case of **Sudhir Kumar Rana vs. Surinder Singh and others reported in (2008) 12 SCC 436**, has held thus :-

“8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

Resultantly, the finding of Tribunal is liable to be brushed aside.

Pertinently, a copy of driving licence was subsequently placed on record, however, that is not considered. So, even on facts the findings recorded by the Tribunal can not be sustained.

10. The next contention raised on behalf of the claimant is that the Tribunal ought to have granted compensation taking his income @ Rs. 20,000/- p.m. and loss of earning commensurate with permanent

disablement suffered by him. The lump sum compensation awarded by the tribunal is unjust.

11. There is no dispute as regards the fact that the claimant was a practicing advocate at the time of accident and evidence in that regard is placed on record. However, there is absolutely nothing to estimate actual income of the claimant at the time of accident. Even there is nothing to indicate the loss of earning commensurate with permanent disablement. The claimant has placed on record some documents to substantiate his agricultural income and holding of 11 Hectare agricultural land. Therefore, the loss of supervision of agricultural income can be definitely looked into while making the assessment of compensation.

12. Pertinently, the claimant failed to bring on record the evidence regarding difficulty faced by him in supervision of the agricultural land and consequential loss suffered by him. The evidence of the claimant itself shows that even after accident, he continues to practice as an advocate. The evidence of PW-2 Chandrakant Ingle shows that after the accident, the claimant was in practice although once suffered fits. The claimant tried to place on record the copy of Income tax return which is submitted on 16.12.2008 i.e. after the accident. No such record of previous years has been pressed into service. Apparently, as observed by Tribunal, the document has been generated to make out the evidence regarding income. Perusal of Exh.51 depicts that net income is shown Rs, 95,500/-. Consequently, even on the basis of such evidence, the actual professional income of the claimant cannot be gathered. However, since the claimant was an Advocate and also holding agricultural land, his notional professional income and loss of management of agriculture land can be estimated to the tune of Rs. 10,000/- p.m. which shall include the future prospects.

13. The claimant has relied upon evidence of Dr. Ruturaj Jadhav the Nuero Surgeon. He deposed that the claimant was admitted to his hospital on 5.1.2008 with injuries i.e. Multiple cerebral contusion with right temporal partial subdural hematoma with gross subarachnoid hemorrhage with midline shift towards left with diffuse brain edema with fracture left partial bone with partial displaced fracture fragment. The C.T. Scan report shows that there was multiple cerebral contusion with right temporal subdural hematoma. He has testified that patient with such injuries can suffer from epilepsy. During cross examination, he denied that the claimant has recovered from the injuries. The claimant relied upon the Disability Certificate issued by the SGGH Hospital which certifies that the claimant has suffered 41% permanent disability. Pertinently, author of the said certificate is not examined. However, since the certificate is issued by a reputed Government Hospital, it cannot be brushed aside merely for the reason that the author has not stepped into the witness box.

13. In view of the aforesaid discussion, it is apparent that the claimant has suffered permanent disablement and also suffered some loss of earning. Although the claimant continued to be in practice and cultivation of land, it is apparent from the record that claimant must have lost his confidence and physical strength owing to permanent disablement. In this situation, in absence of the expert opinion on record, at least 20% loss of earning capacity can be presumed.

14. The claimant has placed on record the medical bills which account for Rs. 89,470 + 81730, as can be seen from Exhs. 34 to 47. The Tribunal has accepted that the claimant requires future medical treatment and awarded Rs. 2 Lakhs on that count, which need not be disturbed. The claimant would also be entitled for non-pecuniary losses,

like compensation towards permanent disablement, pains and suffering, loss of amenities in life etc. In that view of the matter, the award passed by the Tribunal requires to be modified as shown in the tabular format: -

Sr. No.	Particulars	Amount.
1.	Estimated Annual income including future prospects (Rs. 10,000/- p.m.) 10,000x12	Rs. 1,20,000/-
2.	Estimated 20% loss of earning	Rs. 24,000/-
3.	Multiplier of 16 considering the age of the claimant 24,000 x 16 =3,84,000/-	Rs. 3,84,000/-
4.	Medical expenses Rs. 82,730 + 89470 = 1,71,200/-	Rs.1,71,200/-
5.	Future medical expenses	Rs. 2,00,000/-
6.	Towards permanent disablement	Rs. 50,000/-
7.	Towards loss of amenities in life	Rs. 20,000/-
8.	Towards pains and sufferings	Rs. 20,000/-
9.	Loss of income during treatment, attendant charges during hospitalization.	Rs. 25,000/-
	TOTAL	Rs. 8,70,200/-

Resultantly, award passed by tribunal will have to be modified in terms of order passed below.

: ORDER :

[i] The appeal is partly allowed.

[ii] The Judgment and award passed by the MACT, Nanded in MACP No. 341 of 2008 is modified

[iii] The respondent Nos. 1 and 2 shall jointly and severally pay a sum of Rs.8,70,200/- (Rupees eight lakh seventy thousand two hundred only) to the claimant (including NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.

[iv] Compensation already paid/deposited in terms of the award passed by the Tribunal shall be appropriated

[v] Award be drawn accordingly on payment of deficit court fees, if any.

[vi] On deposit of compensation as per the modified award, the entire amount be kept in Fixed Deposit in any nationalized bank in the name of appellant Nos. 2 and 3, who are minors, in equal proportions, initially for a minimum period of five years with renewal clause till the appellant Nos. 2 and 3 attain the age of majority.

[vi] First appeal is disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-