

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

FIRST APPEAL NO.1100 OF 2004

Samdullah Baig s/o Asadullah Baig

Occu.: Agriculture,

R/o.: Near Metha Maruti, Parbhani,

District : Parbhani Through : GPA :

Mirza Anwar Sadat Baig,

Age : 31 years, Occu.: Agriculture,

R/o.: Opp. D.Y.S.P. Office,

Parbhani, District : Parbhani

.... APPELLANT

VERSUS

Atmaram s/o Wamanrao Awad,

Age ; 33 years, Occu.: Nil,

R/o.: Parwa, Taluka and District :

Parbhani

... RESPONDENT

.....

Advocate for Appellant : Ms. Fatima S. Kazi h/f Mr. S. S. Kazi

Advocate for Respondent : Mr. P. N. Sonpethkar

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 07/01/2023

PRONOUNCED ON : 09/01/2023

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JUDGMENT :

1. The appellant, who is the original respondent No.1 in claim petition and owner of the offending motorcycle bearing registration No. MH-20-K-3482, has challenged the impugned judgment and award dated 01/03/2003 passed by the Member, Motor Accident Claim Tribunal, Parbhani (hereinafter referred to as 'the learned Tribunal) in MACP No.217 of 1998 on various grounds including

that he had given the said offending motorcycle to one nephew Anwar Sadat Baig and it was not driven by one Aziz Khan at the time of accident as alleged by the investigating officer. He also challenged the impugned judgment and award on the basis of grant of excessive compensation.

2. The present respondent i.e. original claimant on 19/02/1997 was coming from village Parwa from Parbhani on a bicycle and at that time near one canal bridge, the aforesaid motorcycle bearing No. MH-20-K-3482 came from opposite direction and gave dash to him. Due to the accident, he sustained fracture injury to his nose and thereby became permanently disabled to the extent of 12%.

3. The learned Tribunal has granted total compensation of Rs.88,000/- to the present respondent / claimant from the appellant. Hence, this appeal.

4. The learned counsel for the appellant strongly submits that merely for a fracture of nose, the learned Tribunal has granted excessive compensation and that too in absence of any evidence regarding medical expenditure and disability certificate. She further submits that the offending motorcycle was not in fact involved in the accident and no person by name Aziz Khan was driving the same. She also relied upon judgment in the case of ***Sanjay Singh Thakur, Bilaspur vs. Sultan Ahmad, Bilaspur, M.P. and other, reported in AIR 1996 Madhya Pradesh 30.***

5. On the contrary, the learned counsel for the respondent / claimant supported the impugned judgment and submitted that

the learned Tribunal has rightly assessed the amount of compensation considering the percentage of his disability.

6. It is significant to note that the appellant has challenged the impugned judgment by contending that the said motorcycle was given by him to one Anwar Sadat Baig and at the time of accident he had not given the same to Aziz Khan to whom the police machinery found as a driver of the same. However, the appellant did not examine himself for proving the said fact. Moreover, it appears that the said Mirza Anwar Sadat Baig was only General Power of Attorney Holder of the appellant, who was looking after his agriculture field. Though this Anwar Sadat Baig has stated before the learned Tribunal that Aziz Khan Chhotu Khan was not driving the motorcycle at the time of accident and it was only stationary at some place, but such evidence is not at all convincing since the police machinery after lodging the FIR against Aziz Khan conducted thorough investigation and found that he was in fact driving the said motorcycle. It is significant to note that the appellant has not examined Aziz Khan to establish otherwise. In view of the same, there is no force in the contention of the appellant that Aziz Khan was not driving the offending motorcycle at the time of accident.

7. The learned counsel for the appellant has heavily relied upon the judgment of Hon'ble Madhya Pradesh High Court as cited supra, wherein it has been observed that when there is a dispute regarding ownership of vehicle, registered owner and transferee both would be liable to meet liability under interim award. This citation is not at all applicable considering the facts of this case

because in this matter there is no such dispute regarding ownership of the vehicle.

8. The appellant has also challenged the impugned judgment on the ground that an excessive compensation has been awarded by the learned Tribunal. However, on perusal of the impugned judgment it appears that the learned Tribunal has assessed compensation to the tune of Rs.58,000/- considering the percentage of disability of 12% of the respondent / claimant on account of future loss of income. Further, the Tribunal has also granted an amount of Rs.30,000/- for medical expenses and pain and sufferings despite there being any evidence on record in the form of medical bills. However, though the learned Tribunal calculated the loss of future income to the tune of Rs.58,000/- by different method than the method mentioned in the case of ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343***, by the Hon'ble Supreme Court, but even if the loss of income is calculated as per the observation in the aforesaid case, then also it would come to around Rs.60,000/- to 70,000/- considering the percentage of disability of the respondent / claimant and his income at the relevant time. Therefore, I do not find any force in the submission of the learned counsel for the appellant that the learned Tribunal has granted an exorbitant amount on the ground of future loss of income.

9. Further, it is not in dispute that there are no medical bills produced by the respondent / claimant before the learned Tribunal. However, it has come on record that he had to remain in hospital for 2 to 4 days while his nasal bone was fractured.

Therefore, considering this fact, the amount of Rs.30,000/- granted by the learned Tribunal to the respondent / claimant on account of medical expenses and pain and suffering, appears quite reasonable. It is extremely important to note that the appellant has already satisfied the award by depositing the total compensation of amount, which is already withdrawn by the respondent / claimant. Therefore, considering all these aspects, I do not find that the learned Tribunal has granted an excessive compensation to the respondent / claimant. Thus, there is no substance in the appeal and it stands dismissed accordingly.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-