

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

FIRST APPEAL NO. 2906 OF 2018

Vaibhav S/o Balajirao Dhage
Age: 33 Yrs., Occu: Advocate
R/o: Teacher Colony, Loha,
Tq. Loha, Dist. Nanded

... Appellant
[Orig. Claimant]

Versus

1. Vinod S/o Shivkumar Sharma
Age: Major, Occu: Business
R/o. Aditi Nagar, Takiyaward,
Nagpur Naka, Bhandara, Tq. & Dist. Bhandara

2. National Insurance Company Ltd.
Having its Divisional Officer at,
Nagina Ghat Road, Gurudwara,
Nanded, Through Its Divisional Manager

... Respondents
[R. Nos.1 & 2 are Orig. Respondents]

...

Mr. Manoj D. Shinde, Advocate for the Appellant
Mr. A. D. Date h/f Mr. S. S. Rathj, Advocate for Respondent No.1
Mr. S. R. Bodade, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON : 07.08.2023
PRONOUNCED ON : 18.08.2023**

JUDGMENT :

1. The appellant / original claimant impugns the judgment and award dated 22/02/2017, passed by the Motor Accident Claims Tribunal, Kandhar, District Nanded, in Motor Accident Claim Petition [MACP] No.41/2011 by filing present appeal under Section 173 of the

Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The appellant / claimant had approached the Tribunal under Section 166 of the Act, thereby raising the claim for compensation of Rs.3,00,000/- towards accidental injuries and permanent disability suffered by him in motor vehicle accident. The claimant contends that on 03/10/2010, the appellant was a pillion rider of motorcycle bearing registration no.MH-26-U-3455 and his friend, namely, Govind Trimbakrao Karhale was riding the motorcycle. At that time, a jeep bearing registration no.31-CV-4469 took sharp turn after overtaking the motorcycle and applied sudden brakes. Resultantly, the motorcycle collided on the jeep at its rear side. The appellant suffered grievous injury on his right knee. He was treated as in-patient from 03/10/2010 to 13/10/2010. The accident was reported to the Police Station and the offence was registered against the jeep driver. After due investigation, a charge-sheet is filed against the jeep driver.
3. The claimant further contends that he was practicing Advocate at the time of accident. Because of the injuries suffered in the said accident, he has become permanently disabled. The Medical College and Hospital, Nanded assessed permanent disablement and issued a certificate that the appellant has suffered 20% permanent disablement. As such, he claimed the compensation of Rs.3,00,000/- from the owner and insurer of the jeep. The Tribunal framed the issues, recorded the evidence and after hearing the parties, pleased to dismiss the claim petition holding that the appellant failed to prove the negligence of jeep driver.

4. The appellant / original claimant aggrieved by the dismissal of the claim petition approached this Court.
5. Mr. Shinde, learned Advocate appearing for the appellant would submit that the appellant was a pillion rider on the motorcycle at the time of accident. Due to sudden application of brakes by the jeep driver, motorcycle collided on rear side of the jeep. The offence was registered against the jeep driver and on conclusion of investigation, the charge-sheet [Exhibit-29] has been filed against him. No contrary evidence is brought on record by the respondents to dislodge the conclusion drawn by the police machinery. He would, therefore, submit that the Tribunal committed grave error while recording the finding of negligence against the motorcycle rider. He would further submit that if the Court concludes that the motorcycle rider was also responsible in the cause of accident, the case would be governed by the principles of composite negligence. The appellant / claimant has choice to prosecute his remedy under any of joint tortfeasors. Therefore, the respondents cannot escape from the liability to reimburse the loss suffered by the claimant.
6. Mr. Bodade, learned Advocate appearing for respondent no.2 - Insurance company vehemently submits that the Tribunal has rightly recorded the findings of negligence against the motorcycle rider and dismissed the claim petition. He would submit that in a claim filed under Section 166 of the Act , the pleading and proof of negligence is *sine qua- non*. In absence of the proof of negligence against the jeep driver, the claimant has no cause of action to raise the claim. He would invite attention of this Court to the spot panchnama [Exhibit-27] to contend that no signs of tyre marks of

jeep found on the spot that itself indicates that the story made out by the claimant is false.

Mr. Bodade, learned Advocate would further submit that the claimant has not placed anything on record to show that he was practicing Advocate at the time of accident or he has suffered loss of earning on account of injuries in the accident. He would further submit that the permanent disability certificate relied by the claimant is not proved by examining Author of the certificate. Hence, no weightage can be given to such document. He would therefore justify the award and urge to dismiss the appeal.

7. Having considered the submissions advanced by the learned Advocates appearing for the respective parties, apparently, there is no dispute that the claimant suffered injuries in an accident involving the jeep and motorcycle. A FIR was registered against the jeep driver. After due investigation, the charge-sheet is filed against the jeep driver. The claimant recorded his own oral evidence, by which, it is sought to be established that the jeep driver was responsible for the accident. To counter the aforesaid evidence on record, the jeep driver did not step into the witness box. The evidence recorded by the claimant prima facie sufficient to establish his case regarding the negligence against the jeep driver. It is trite that the proceedings under Section 166 of the Act is summary in nature and the rule of preponderance of probabilities has to be applied while appreciating evidence during the course of such proceedings. In absence of the contrary evidence, the case of the claimant that the jeep driver was responsible for the accident, can be safely accepted. The Tribunal rejected the contention of the claimant merely on the

ground that in spot panchanama [Exhibit-27], the brake marks of the motorcycle or jeep are absent. Pertinently, the spot panchnama is drawn after more than 15 days of the accident. It cannot be expected that the tyre marks would be available at the spot after such a long period. Therefore, merely for such reason, the claimant could not have been unsuited. The approach of the Tribunal should be in favour of the protecting interest of the victim of accident and not finding fault or shortcomings in the evidence. In that view of the matter, the finding recorded by the Tribunal on the point of negligence is not sustainable in law. If we look at the evidence from other angle and consider the contributory negligence of the motorcycle rider as well as jeep driver in the cause of accident, the case of the claimant who was a pillion rider on the motorcycle would be governed by the principles of composite negligence and he would have choice to prosecute his remedy against any of the joint tortfeasors. Applying the principles of composite negligence in the facts of the present case and even without joining owner and insurer of motorcycle as party, the claimant can prosecute the claim against the owner and insurer of the jeep and recover the compensation.

8. The claimant has relied upon the permanent disability certificate [Exhibit-34] which certifies that the claimant suffered 20% permanent disablement. The injury i.e. fractures to bicondylar tibia right (nailing done) is referred in the certificate. The said certificate is signed by the Medical Officer, S.G.G.S. Memorial Hospital, Nanded which is a Government Hospital. In that view of the matter, non- examination of the Author of certificate may not be sufficient to discard the certificate in its entirety.

9. The Supreme Court of India in the matter of **Raj Kumar Vs. Ajay Kumar & Anr.** reported in **2011 (1) SCC 343** has observed that if the certificate of disability is issued by the Government Hospital, it can be safely accepted as the proof of disability in absence of the contrary evidence.
10. Mr. Bodade, learned Advocate appearing for respondent no.2 placed his reliance on the observations of Supreme Court in the matter of **Rajesh Kumar @ Raju Vs. Yudhvir Singh & Anr.** reported in **(2008) 7 SCC 2396** to contend that the disability certificate cannot be accepted in absence of examination of treating Doctor. Pertinently, such observations are made while deciding the case under the Workmen's Compensation Act, 1923 and in the background that the certificate was issued after two years of the accident. It is further observed that it is not known whether the percentage of disability is calculated on the basis of the provisions of Workmen's Compensation Act or otherwise. Such it is not the case in hand, the certificate is issued on 06/06/2011 by the Medical Officer from Government College and Hospital, Nanded within a period of eight months of the accident. Hence there is no impediment in accepting the contents of certificate so also the contention of the claimant that he has suffered permanent disablement.
11. Turning to the assessment of compensation, the claimant has pleaded that he was practicing Advocate at the time of accident. Unfortunately, no document is placed on record in support of the contention. The claimant made a statement on oath that he was a practicing Advocate at the time of accident but nothing is placed on record to show exact income at the time of accident or the loss

suffered by him due to the injuries. The claimant contends that he was earning Rs.10000/- per month without supporting evidence of exact income and loss of earning. Perusal of the cross examination on behalf of their insurance company depicts that during cross examination statement of the claimant that he was a practicing Advocate is not controverted. In this background, it can be accepted that the claimant was practicing Advocate at the time of accident.

12. In absence of the income proof and considering the age of the claimant at the time of accident, his notional income can be safely considered to the tune of Rs.6000/- per month. Although the claimant has suffered 20% permanent disablement in absence of the evidence regarding the loss of earning, it would be appropriate to consider the same in the range of 10%. The disability certificate only confirms that the claimant had a fracture to his right leg and nailing was done that itself would not be sufficient to hold the loss of earning commensurate to the permanent disablement. The claimant would be entitled for compensation towards non-pecuniary heads like loss of earning during hospitalization, permanent disablement, pain and sufferings, attendant charges etc. In that view of the matter, the claimant would be entitled for compensation as indicated below in tabular form:

Sr. Nos.	Heads	Amount (Rs.)
1.	Annual income of the claimant [6000x12]	Rs.72,000/-
2.	Addition of 40% towards future prospects [72000 + 28800 = 100800]	Rs.1,00,800/-
3.	10% future loss of earning after applying multiplier of '18' [10080 x 18]	Rs.1,81,440/-

4.	Permanent disablement	Rs.20,000/-
5.	Loss of amenities in life and pain and sufferings	Rs.10,000/-
6.	Attendant charges	Rs.10,000/-
7.	Medical Expenses	Rs.71,616/-
8.	Loss of earning during hospitalization/treatment period and transportation	Rs. 20,000/-
	Total	Rs.3,13,056/-

13. In that view of the matter, the appeal deserves to be allowed.
Hence, this Court proceeds to pass the following order:

ORDER

- (i) Appeal is allowed.
- (ii) The judgment and award dated 22/02/2017, passed by the Motor Accident Claims Tribunal, Kandhar, District Nanded, in Motor Accident Claim Petition [MACP] No.41/2011 is quashed and set aside.
- (iii) The respondent nos.1 and 2 shall jointly and severally pay compensation of **Rs.3,13,056/- [Rupees Three Lakhs Thirteen Thousand Fifty Six Only]** along with interest @ 6% per annum to the claimant.
- (iv) Award be drawn up on payment of deficit court fees, if any.
- (v) On deposit of amount, the appellant / claimant shall be entitled to withdraw the same.
- (vi) Appeal is disposed of accordingly.

[S. G. CHAPALGAONKAR, J.]