

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1551 OF 2012

Basavraj S/o Sidanna (Siddappa) Kushur)
Age: 20 years, Occ: Truck)
Cleaner, R/o Village Bhagwadi, Taluka)
Chiapur, District: Gulbarga, (Karnataka))....Appellant
(Original Applicant)

Versus

1. M/s. CIFCO Finance Ltd.,)
15th Floor, Maker Chamber V,)
Nariman Point, Bombay – 400 021)
2. Subhash Vishwanath Sharma)
Age: 30 years, Occ: Car Driver,)
R/o Khimaji Nagri W.No.8, R.156,)
S. B. Marg, Bombay – 400 013.,)
3. The New India Assurance Company Ltd.)
Branch No.1111 of Nehar Chambers,)
Jamnalal Bajaj Road,)
Bombay – 400 021.)....Respondents
(Original Opponents)

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Mr. Rahil Jhaveri, for Appellant.
Ms. Poonam Mital, for the Respondent No.3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH 2023.

JUDGMENT:

1. By way of this Appeal, Appellant/claimant has challenged the dismissal order passed by the Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

2. It is contention of learned Counsel for the Appellant/claimant that the Tribunal has erred in dismissing the claim Petition filed by the claimant on the ground that claimant had contributed in the accident. Learned Counsel submits that the claimant was standing on the side of the road i.e. Kaccha road and offending vehicle initially dashed to the driver of the truck who was standing on the road, thereafter to the claimant who was standing behind the driver of the truck. But, this fact was not considered by the Tribunal and wrongly concluded that the accident occurred due to negligence of the claimant. Learned Counsel further submits that due to accident, the claimant has suffered 100% permanent disability and he has suffered paraplegia. To prove the disability, the claimant has examined Doctor Sanjay Dantakale and Dr. Rajiv Chidgupkar. But, the Tribunal has not considered the evidence of doctors. After the accident the claimant is unable to do any work. Hence,

requested to allow the Appeal.

3. It is contention of learned Counsel for Respondent-Insurance Company that the truck was stationed on the side of the road in the negligent manner without putting parking light or indicator on, the accident occurred due to sole negligence of the driver of offending truck as the truck was stationed in dangerous condition. The Tribunal has rightly considered that the accident occurred due to negligence of the claimant. Learned Counsel further submits that claimant has not suffered 100% disability in the said accident and no evidence produced on record in that regard. Hence, requested to dismiss the Appeal.

4. I have heard both learned Counsel. Perused the judgment and order passed by the Tribunal. The Tribunal has dismissed the claim Petition on the ground that the truck was stationed on the road. It was not guarded by keeping stones on the tar road, the parking lights of truck were not on and the driver of offending car tried to stop the car by applying brake. In order to save the claimant, it shows that the claimant was contributed to the accident to the extent of 100%. He himself was rash and negligence in sitting on the tar road and checking the air pressure of the rear driver side wheels

of the truck. On that basis, the Tribunal has dismissed the claim Petition. I am unable to understand the observation of the Tribunal regarding negligence of the claimant as claimant was the cleaner of the truck. No evidence produced on record to prove the negligence of the claimant. The driver of offending car did not step in to witness box to prove the negligence of the claimant.

5. It is the claimant's case that on 02.07.1991 at about 8 p.m., the driver of the truck took truck on the extreme left side of the highway to check air pressure in the wheels of the truck. The claimant and the driver Somlu got down and were checking the air pressure in the wheels, at that time one fiat car (offending car) bearing registered No.BLD 8089 which was driving by Respondent No.2 in high speed and negligent manner, gave a dash to the stationery truck and caused injuries to the claimant and truck driver Somlu. It is contended that the truck was at the northern side of the road. The Respondent No.2 was driving the car in high speed in a rash and negligence manner and as such could not control speed of the car and gave dash to the back side of the truck. To prove the negligence of offending car driver, the claimant examined himself. He has stated that on the date of accident the truck driver stopped

the truck on left side of the road and this witness was removing the excess air from the cleaner's side rear wheel of the truck. The driver of the truck was standing on the left side of the road, this witness was standing on back side of the driver. He was having a torch in his hand. One car coming from Pune side gave dash to this witness due to said dash this witness become unconscious on the spot. He was admitted in Ambica Hospital, Solapur for about 1 ½ months. This witness sustained grievous injuries due to accident. Thereafter, he was admitted in various hospitals. Due to accident, he has permanently disabled and he requires attendant for 24 hours. He cannot stand or sit. He does not have control for passing urine.

6. This witness further stated that the accident took place because of rash and negligence driving of the car driver and the truck was stationed on extreme left side on the kaccha road. In the cross-examination, this witness stated that the road was having kaccha portion of about 5 ft. width each on either side of the road and he was checking the air of cleaner side rear wheel of the truck. This witness denied the suggestion that he was sitting on the right side of truck for checking air. Nothing elicited in cross-examination of this witness. The spot panchnama is at exhibit-28. The spot panchnama

shows that there were 50 feet brake marks of car were appearing on tar road. From the evidence of the claimant and from the spot panchmana, it appears that truck was stationed on the left side of the road and the offending car gave dash to the said truck from backside, there were 50 fts. brake marks of car on the tar road. It shows that the car was in excessive high speed and car driver had lost his control due to high speed and gave dash to the truck.

7. The Tribunal has observed that no evidence has come on record that lights or indicators of said trucks were in on condition. It has not come on the record whether indicator or parking lights of the said truck were on or not. It has come on record that the driver and the cleaner of truck were holding torch in their hands while checking the air and the claimant was checking the air of cleaner side rear wheel of the truck. If contributory negligence of the driver of truck considered. But, the contributory negligent of the claimant can't be considered as he was checking the air of cleaner side wheel of the truck. The tribunal without considering evidence on record on imagination observed that the claimant was checking air of right side of wheel's of truck.

8. Moreover, to prove the negligence of the claimant-driver of the offending car did not step into witness box. Hence, I hold that there was no contributory negligence of the claimant in the said accident.

9. To prove the disability, the claimant has examined Dr.Sanjay Dantkale at exhibit-45. He has stated that claimant was admitted in his hospital i.e. in Ambica Hospital, Solapur as in door patient from 02.07.1991 to 21.07.1991. He was a patient of praumatic paraplegia due to compression fracture of T-12 with compound fracture with tibia fibla left. The patient was operated for Harrington bistraction instrumentation and above knee west for fracture of tibia fibula left. The X-rays were taken. He stated that the patient was paralytic below the west and the patient was having 100% physical disability when he was admitted in his hospital. In cross-examination, this witness stated that he cannot give percentage of disability of the patient at the present, unless he could see the patient. He had given the percentage of disability on the basis of case papers and discharge card.

10. The claimant examined by Dr. Raju at exhibit 47, this witness has stated that he is radiologist and he had taken x-rays of

thoracolumbar spine, anterior postoor laterar of left leg. It is at exhibit 48. The x-rays are placed at exhibit 49. From the evidence of this witness, it shows that the claimant was admitted in the hospital after the accident. He has become paralytic below west. There is no reason to disbelieve these expert witnesses. The claimant has stated he took treatment in other hospitals also. It has come in the evidence of Dr. Dantakale, who treated the claimant for first time that claimant was of praumatic paraplegia due to compression fracture of T-12 with compound fracture with tibia fibla left. It shows that the claimant is permanently disabled in the said accident.

11. From the evidence of doctors and the claimants as well as there is no cross-examination on the point of 100% disability of the claimant by the learned Counsel for the insurance company. I hold that due to accidental injuries the claimant has suffered 100% disability. It has come in the evidence of the claimant that he was getting Rs.4,000/- per month by way of salary. I am considering it as monthly income of the claimant. It has come on record that the claimant has incurred medical expenses.

12. Considering above calculations, the claimants are entitled

for following compensation:

Particulars	Amount
Loss of salary (400x12x18)	Rs. 86,400.00
Loss of future prospects 100%	Rs. 86,400.00
Medical expenses	Rs. 11,757.00
Further medical expenses	Rs. 1,25,000.00
Attendant charges	Rs. 1,25,000.00
Loss of conveyance, transport charges	Rs. 75,000.00
Pain & suffering	Rs. 2,00,000.00
Special diet	Rs. 75,000.00
Loss of amenities, comfort & mental agony	Rs. 1,00,000.00
Total Compensation	Rs. 8,84,557.00

13. At this stage, learned Counsel for Respondent-insurance company submitted that the claim Petition was filed in the year 1991, it was decided in the year 1995. The Appeal was registered in the year 2012, so the interest on compensation should be awarded from the year 2011 instead of the year 1999. Learned Counsel for the claimant agrees for it.

14. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The claimant is entitled for compensation amount Rs.8,84,557/- at the rate of 7.5% interest per annum from 01.01.2011 till realization of the amount.
- iii. The Respondent-insurance company is directed to deposit the compensation amount along with accrued interest thereon within six weeks after receipt of the order.
- iv. The claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- v. Pending application, if any, is disposed of.

(SHIVKUMAR DIGE, J.)