

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 857 OF 2011

Shri. Purushottam Trimbak Vani	)	
Age : 40 yers, Occu: Contractor,	)	
R/o. 1638, 'E' Ward, Rajarampuri,	)	
Kolhapur	)	Appellant (Org. Claimant)

Versus

1. Mrs. Aruna Purushottam Vani	)	
Age : Major, Occu: Business,	)	
R/o. 1638, 'E' Ward,	)	
Rajarampuri, Kolhapur.	)	
2. The New India Assurance Co. Ltd.,	)	
A/p. 1036, 'E' Ward, Rajaram Road,	)	
Kolhapur	)	Respondents

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Mr. Tanaji Mhatugade for the Appellant
Mrs. Poonam Mital for the Respondent

CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order passe by the Motor Accident Claims tribunal Kolhapur.

Appellant/claimant preferred this appeal.

2. Brief facts of the case are as under.

On 17 April, 2002 at about 3:00 a.m. the claimant and his other family members were proceeding towards Kolhapur by the Maruti Car MH/09/S/4109 when they reached near village Udatara on Pune-Bangalore highway due to mechanical defect in the car their driver stopped the car by parking the said car. He went for answer the nature's call without putting on parking lights as well as without taking proper care and caution of passing vehicles. The driver of Maruti car parked the vehicle negligently on the road without observing traffic Rules and road regulations. At the relevant time unknown vehicle came in high speed and dashed the Maruti car due to which the claimant sustained grievous injuries. The offense was registered against the driver of unknown vehicle.

3. The claimant filed claim petition for getting compensation before Motor Accident Claims Tribunal, Kolhapur (for short '**the tribunal**'). The tribunal has dismissed the claim petition, against said judgment and order this appeal.

4. It is contention of learned counsel for the

appellant/claimant that at the time of accident the claimant was 40 years old and he was earning Rs. 4,000/- per month. The accident as occurred due to negligence of driver of maruti car. He had parked the car without observing traffic rules. The claimant was admitted in hospital, he has suffered 51% permanent disability in the said accident. Doctor was examined to prove the disability of the claimant but tribunal has observed that the Appellant failed to prove negligence of driver of car and it is hit and run case, therefore, the tribunal has no jurisdiction to try the present petition. The owner and Insurance Company are not liable to pay any compensation to the claimant, on that basis tribunal has dismissed the claim petition.

5. It is contention of learned counsel for the respondent/insurance company that the claimant was occupant of car. The dash was given by unknown vehicle. The tribunal has considered all aspects on that basis claim petition is dismissed which is proper no interference is required in it.

6. I have heard both learned counsel perused judgment and order passed by Motor Accident Claims Tribunal (for short 'the tribunal') while dismissing the claim petition. The tribunal has observed that, it is hit and run case, therefore the tribunal has no

jurisdiction to give compensation. I am unable to understand observations made by the tribunal, has no power to award the compensation, when it has come on record that accident occurred when claimant was sitting in the car, and other vehicle hit the said car and ran away. In the said accident the claimant has injured. Though there was no offense registered against driver of Maruti Car but it appears from record that he negligently parked the said car on road without putting parking lights on, because of which other vehicle hit it, so it was the negligence of driver of Maruti car. It was insured with respondent no. 2/insurance company. As a occupant of car, the claimant is entitled to get compensation from respondent no.2.

7. To prove the disability the claimant has examined Dr. Shirish Damodare at Exhibit-47/c, this witness has stated that he treated the claimant in his hospital there were eight fractures in right lower limb and four fractures in left lower limb. He performed several surgeries on these two legs, due to said injuries the claimant cannot work properly. He had difficulty in squatting, he has shortening of right leg, he has difficulty while walking and climbing stairs etc. The claimant has suffered 51% disability.

8. In cross-examination this witness admitted that after

considering the whole body disability. The disability of the claimant may be 10% to 15%. There is no Government Regulation to calculate it. In my view, this witness is expert witness, this witness has stated that he has done surgeries on the both legs of the claimant and there is shortening of right leg. It shows that disability certificate issued by this witness is proper.

9. The claimant in his evidence has stated that he was a doing business and from that source he was earning Rs. 4,000/- per month, no evidence produced on record to prove that claimant was getting Rs. 4,000/- per month from the business, the accident is of year 17 April, 2002. Hence, I am considering Rs.2,000/- as notional monthly income of the claimant.

10. Considering Rs.2,000/- per month as income of the claimant yearly income comes to Rs. 24,000/- at the time of accident the claimant was 40 years old, the proper multiplier is 15, $24,000 \times 15 = \text{Rs. } 3,60,000/-$. permanent disability 50%, it comes to Rs. 1,80,000/-, medical expenses which are proved by exhibited documents are of Rs. 1,38,680/-, deceased was admitted in hospital for more than one month hence, I am considering attendance charges at Rs. 15,000/- loss of amenities in life Rs. 50,000/- as his leg is

shortened pain and suffering Rs. 15,000/-, so total of it comes to Rs. 5,52,680/- to round up Rs. 5,53,000/-. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
- ii. The appellant/claimant is entitled Rs. 5,53,000/- at the rate of 7.5% interest from filing of claim petition till realization of the amount.
- iii. The respondents shall deposit compensation amount along with accrued interest thereon within six weeks after receipt of the order.
- iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

(S. G. DIGE, J.)