

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

FIRST APPEAL NO.2049 OF 2005

Mrs. Rati Ratanshah Chhor,
Aged 60 years, residing at 7/A Wadia
Building, 2nd Floor, Chandanwadi,
Mumbai – 400 002.

Appellant
...(Orig. Applicant)

Versus

1. Mr. Dalal Pranav Ramamlal
402, Chuchum Saraswati Road,
Plot No.82/1E, Santacruz (W),
Mumbai – 400 054.

2. New India Assurance Co. Ltd.
New India Building, M.G. Road,
Fort, Mumbai – 400 023.

Respondents
...(Orig. Opponents)

Mr. T. J. Mendon for the Appellant.
Ms. Poonam Mital for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 24th MARCH, 2023

Oral Judgment :

1. By way of this Appeal, the claimant is praying for enhancement of compensation.
2. It is contention of learned counsel for the Appellant that accident occurred due to sole negligence of driver of the car.

The Tribunal has awarded compensation of Rs.1,60,000/-, but while awarding compensation the Tribunal has considered 50% contributory negligence of the injured claimant which is improper.

3. The learned counsel further submits that to prove contributory negligence, the driver of car was not examined. Mere on assumption, the Tribunal has considered 50% contributory negligence which is improper. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the Respondent-Insurance Company that accident occurred, when the claimant was crossing the road, she should have taken proper care while crossing the road, but it was not taken. Hence, the Tribunal has rightly considered the contributory negligence of claimant and no interference is required in it.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal'). It is claimant's case that on 30th March, 1992 at about 05:15 p.m. the claimant was proceeding towards sea by crossing road from Parsi Gymkhana at Marine Drive. She had observed the traffic while crossing the road, but while she was still on the road, a car bearing MH-02-B-2965 that was proceeding on said road and that was being driven in a rash and negligent manner had knocked her down and the claimant sustained serious injuries. While allowing the claim petition, the Tribunal has considered 50% contributory negligence of claimant.

6. In my view, it has come on record that the driver of

offending car did not sound the horn, at the time of accident, the claimant was 65 years of age. She was using spectacles for short and long sights. So she may not have noticed the car, but the car driver must have noticed the claimant, when she was crossing the road, car driver had time to apply the breaks, but it appears from record, he had not applied breaks after seeing the claimant. It shows the negligence of car driver. Moreover, car driver did not step into witness box to prove the negligence of the claimant. The FIR was registered against the offending car driver. Hence, I hold that, the accident occurred due to sole negligence of the offending car driver. The Tribunal has awarded Rs.1,60,000/-. Hence, the claimant is entitled for remaining Rs.80,000/-.

7. In view of the above, I pass following order:-

O R D E R

- (i) The Appeal is allowed. No order as to cost.
 - (ii) The claimant is entitled for Rs.80,000/- @ 7.5% per annum from the date of filing of claim petition till realization of the amount.
 - (iii) The Respondent-Insurance Company is directed to deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of this order.
 - (iv) The claimant is permitted to withdraw deposited amount along with accrued interest thereon.
8. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)