IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.447 OF 2021

SHRIRAM GENERAL INSURANCE CO.LTD.,
through its Manager, branch office,
c/o 10003-E-8, Ricco Industrial Area, Sita Pura,
district Jaipur, Rajasthan 302022.
having its branch at T-5, Shradha House,
3rd floor, 345 Kingsway, Nagpur,
through its branch manager. ….. **Appellant.**

:: V E R S U S ::

1. Shri Rajesh s/o Pratap Parihar,
aged about 46 years, occupation:nil,
r/o Yeota, taluka Chikhli, district Buldhana.

2. Shri Sanjay s/o Arjun Sangale,
aged major, occupation owner of TATA 407,
r/o Mandva, taluka Lonar, district Buldhana. ….. **Respondents**.

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Shri H.N.Verma, Counsel for the Appellant.
Shri S.P.Pawar, Counsel for Respondent No.1.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 01/03/2023
PRONOUNCED ON : 28/04/2023

JUDGMENT

1. By this appeal, the appellant Shriram General Insurance Company Limited (the insurance company) challenges judgment and award dated 2.12.2019 rendered by learned Member of the Motor Accident Claims Tribunal (learned Member of the tribunal), Buldana in MACP No.71/2012 whereby the claim petition filed by respondent

No.1 (the claimant) was allowed awarding compensation to the claimant of Rs.25,14,060/- with interest at the rate of Rs.7.5% per annum from the date of the petition. The correctness, propriety, and legality of the judgment impugned are under challenge in this appeal urging certain relevant facts and grounds.

2. Brief facts of the case necessary for disposal of the appeal are as under:

On 19.1.2012, the claimant was proceeding towards Chikhli by 'Minidoor' bearing No.MH-28-A-8011. The claimant was driving the Minidoor in a moderate speed and following the traffic rules. As per the contention of the claimant, as repairing work of road was in progress, all traffic was diverted to right side of Deulgaon Raja-Chikhli Road. When the claimant reached near Berala-Shivar on the Deulgaon Raja-Chikhali Road, at the relevant time, vehicle 'Tata 407' bearing No.MH-28-H-6239 (the offending vehicle), being driven on wrong side in a rash and negligent manner without following the traffic rules, came from the opposite side and dashed to the 'Minidoor'. Due to the severe dash, the claimant sustained grievous injuries like Grade III fracture, distal femur left side, Grade III B fracture Tibia Fibula right side, blunt abdomen with mesentric, and amputation of left leg. He incurred Rs.3,55,000/- towards his medical treatment which is still going on. An offence was registered regarding the said accident against the driver of the offending vehicle. As per the contentions of the claimant, the offending vehicle was owned by Sanjay Sangale, the respondent No.2 and validly insured with the insurance company. As the said accident took place due to the rash and negligent driving of the driver of the offending vehicle, the claimant is entitled to receive compensation.

3. In response to the Notice issued, though the respondent No.2, the owner of the offending vehicle, appeared, he failed to file his written statement and, therefore, the claim petition proceeded without his written statement. The insurance company resisted the claim petition on the ground that the driver of the offending vehicle was not holding with him a valid driving licence. Thus, the owner of the offending vehicle has committed breach of terms and conditions of the policy and, therefore, the

insurance is not liable to pay compensation. The further defence raised by the insurance company is that the alleged accident took place due to the contributory negligence of both the drivers of the vehicles, i.e. 'Minidoor' and the offending vehicle, and, therefore, liability of the accident is also of the claimant and as such he is not entitled for any compensation.

4. Learned Member of the tribunal framed the necessary issues, recorded evidence of the claimant vide Exhibit-23, examined Dr. Yogesh Baliram Vargantwar vide Exhibit-43, PW3 Dr.Vijay Shripat Wagh vide Exhibit-52, and PW4 Dr.Pawan Pralhadrao Jadhao vide Exhibit-59.

5. Besides the oral evidence of the claimant, he placed reliance on police papers, FIR Exhibit-29, spot panchanama Exhibit-30, discharge card Exhibit-31, the offending vehicle's registration certificate Exhibit-32, the insurance policy Exhibit-34, the Accident Form-A Exhibit-35, medical bills, medical bills issued by the Citycare Superspeciality Hospital, Aurangabad, and disability certificate Exhibits-53 and 60. None was examined on behalf

of the insurance company to prove its case before learned Member of the tribunal.

6. Learned Member of the tribunal, on the basis of appreciation of pleadings and the evidence on record, has answered issue Nos.1, 2, and 4 in affirmative and issue No.3 in negative holding that the driver of the offending vehicle was responsible for the said accident occurred.

7. Learned Member of the tribunal quantified the compensation accepting the evidence of the claimant and awarded the compensation at the rate of Rs.25,14,060/- along with the interest at the rate of 7.5% per annum from the date of the petition, till realization of the amount from the insurance company and from the owner of the offending vehicle.

8. Being aggrieved and dissatisfied with the judgment and award, the present appeal is preferred by the insurance company on the ground that learned Member of the tribunal had not considered that the claimant has also contributed for the said accident. Learned Member of the tribunal solely relied upon the evidence of the claimant and

accepted that the claimant was earning Rs.8000/- per month and awarded the compensation. The learned Member of the tribunal considered the disability 100% though there was no functional disability. In fact, the medical evidence shows that the injured has sustained 80% of the permanent disability. Thus, the findings of learned Member of the tribunal are perverse. It is further contended that without proving the medical bills, the compensation under the medical bills was awarded to the claimant which is exorbitant and excessive one and the same is liable to be quashed and set aside.

9. Heard learned counsel Shri H.N.Verma for the insurance company and learned counsel Shri S.P.Pawar for the claimant.

10. Learned counsel Shri H.N.Verma for the insurance company reiterated the contentions as pleaded in the claim petition and submitted that the claimant has contributed for the said accident. Learned Member of the tribunal, without considering the evidence on record, held the driver of the offending vehicle responsible for the said accident. Moreover, learned Member of the tribunal, without any evidence, held

the income of the claimant at the rate of Rs.8000/- per month and awarded the compensation which is excessive and exorbitant one. Thus, the judgment and award awarding the compensation passed by learned Member of the tribunal is excessive and exorbitant which is liable to be quashed and set aside.

11. In support of his contentions, learned counsel Shri H.N.Verma for the insurance company placed reliance on the decision of this Court (at Panaji-Goa) in the case of **Pukhraj Bumb vs. Jagannath Atchut Naik and others**, reported in **2014(4) Mh.L.J.** wherein it has been held that the claimant could not prove that the accident occurred due to rash and negligent driving of the car by respondent No.1. The claimant is entitled to receive the compensation.

12. *Per contra*, learned counsel Shri S.P.Pawar for the claimant submitted that the oral evidence of the claimant, who sustained the injuries in the accident, corroborated by the police papers is sufficient to show that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. The claimant further proved that

due to the accidental injuries, his left leg was amputated below knee. As the claimant was driver by profession and as his left leg was amputated, he is unable to drive vehicles. Thus, the disability of the claimant is 100% as he lost his earning capacity 100% and, therefore, the contention of the insurance company, that there was no functional disability, is not acceptable.

13. In support of his contentions, learned counsel Shri S.P.Pawar for the claimant placed reliance on the decision of the Honourable Apex Court in the case of **Arjun s/o Ramanna alias Ramu vs. IFFCO TOKIO General Insurance Company Limited and another**, reported in **(2022)5 SCC 706** wherein it is held that there is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated him from doing the work which he was capable of doing. The said work was of driving a vehicle. Therefore, the learned Commissioner for Workmen's Compensation was right in holding that the disability of the appellant will have to be treated as 100% disability.

He further placed reliance on the decision of this Court in the case of **Prakash s/o Mahadeorao Nirmal vs. Rajesh Ramfer Yadav and others, reported in 2014(3) Mh.L.J. 415** wherein it is held that medical papers corroborated nature of injury sustained by the claimant. It can be read in the evidence.

Lastly, he placed reliance on the decision of the Honourable Apex Court in the case of **Minu Rout and another vs. Satya Pradyumna Mohapatra and others, reported in (2013)10 SCC 695** wherein it is held that no evidence is adduced by the insurance company to prove its plea that the accident did not take place due to rash and negligent driving of the truck.

14. Having heard learned counsel for the insurance company and learned counsel for the claimant perused the evidence adduced, there is no dispute that the accident occurred on 19.1.2012. The insurance company has also not denied the occurrence of the accident and involvement of the offending vehicle in the accident. The only contention of the insurance company is that the claimant, who was driving the

'Minidoor', was also responsible for the said accident and, therefore, contributory negligence is attributable to the claimant.

15. Perusal of the evidence of the claimant shows that at the relevant time, he was driving the 'Minidoor'. At the relevant time, two persons namely Bhimrao Ghewante and Nitin were along with him. The road repairing work was in progress and, therefore, the traffic was diverted towards right side of the road. At the relevant time, the offending vehicle came in a high speed in a rash and negligent manner and dashed against his vehicle. The claimant was cross examined. However, to show the contributory negligence of the claimant, nothing was brought on record. The evidence of the claimant during the cross examination shows that at the time of the accident, the vehicular movement was allowed from one side only. The accident took place at the point of divergence. Rest of the cross examination on his negligence is in the denial form.

16. Regarding the said accident, one Pratap Parihar has lodged the report who was the eyewitness of the said

incident. Recital of the FIR shows that as the driver of the offending vehicle has driven his vehicle in an excessive speed, could not control his vehicle and dashed against the 'Minidoor' of the claimant. In the said accident, the claimant has sustained the injuries. The spot panchanama also supports the recital of the FIR. Thus, the recital of the FIR shows that the alleged accident took place due to the rash and negligent driving of the driver of the offending vehicle. Though the insurance company claimed the contributory negligence and, therefore, the claimant is also responsible for the said accident, no evidence is adduced by the insurance company either by examining the driver of the offending vehicle or by cross examining the claimant on contributory negligence.

17. Admittedly, the police papers nowhere show that it was head-on collusion. Recital of the FIR shows that it was the driver of the offending vehicle who driven his vehicle in an excessive speed and could not control his vehicle and dashed against the vehicle of the claimant.

18. Thus, the oral evidence of the claimant is supported by the police papers. The police papers, FIR, and the panchanama are admissible in the evidence. The documents produced by the claimant, along with the petition, are the certified copy of the FIR and the spot panchanama. The claim petition has not been defended either by the owner or the driver of the offending vehicle. Despite the permission granted to the insurer, not a single admission was brought on record by the insurance company on the issue of the negligence. The insurance company has not adduced the evidence by examining the driver of the offending vehicle. Insofar as the admissibility of the FIR and the spot panchanama is concerned, it is admissible in the evidence considering the compensation is claimed under the Motor Vehicles Act, 1988. Thus, the contention of the insurance company that the claimant has also contributed for the said accident is not at all proved by the insurance company. The defence of the insurance company, that the driver of the offending vehicle was not holding a valid driving licence with him, is also not supported as Exhibit-34 which is driving licence of the driver of the offending vehicle produced on

record shows that he was holding a valid driving licence with him for light motor vehicle transport.

19. Insofar as the submissions of the insurance company in respect of the quantum of compensation is concerned, it is submitted that the claimant has not sustained the functional disability. It is further submitted that as per the medical evidence adduced, the claimant has sustained 80% of disability. However, learned Member of the tribunal has considered 100% of disability. In support of the contentions, learned counsel Shri H.N.Verma for the insurance company placed reliance on the decision in the case of **Pukhraj Bumb vs. Jagannath Atchut Naik and others** cited *supra*.

20. Having gone through the facts in the case of **Pukhraj Bumb vs. Jagannath Atchut Naik and others** cited *supra* it shows that the claimant could not prove that the accident occurred due to rash and negligent driving. Thus, the facts in the said case are not identical with the present case.

21. Insofar as the issue of disablement is concerned, the claimant has adduced the evidence of PW2 Dr.Yogesh Baliram Wargantiwar, whose evidence is to the extent that the claimant was admitted in the Citycare Superspeciality Hospital, Aurangabad wherein he was working as Neuro Surgeon. His evidence further discloses that the claimant was indoor patient from 19.1.2012 to 8.2.2012 and he incurred the expenses of Rs.1,76,000/-. The evidence of the said doctor is not shattered during the cross examination. The bill of Rs.1,76,000/- was proved.

PW3 Dr.Vijay Shripat Wagh, had assessed the disability of the claimant by examining him and on perusing his treatment papers, he observed that the claimant has sustained Grade III C fracture of distal femur left side and Grade III B compound fracture tibia fibula. The injuries sustained on the left leg resulted in amputation above knee. The evidence further discloses that because of the injuries, his left leg was amputated from upper to the knee. The disability is of permanent in nature which is at Exhibit-53.

PW4 Dr.Pawan Pralhadrao Jadhao, is also Medical Officer attached to the Citycare Superspeciality Hospital, Aurangabad who also testified that he had also assessed the permanent disability to the extent of 80%. His evidence further shows that due to the amputation, the claimant cannot perform ground level activities.

22. Thus, the evidence of above these witnesses shows that due to the accidental injuries, left leg of the claimant was amputated above knee. The discharge card Exhibit-31 also supports that the left leg of the claimant was amputated above knee.

23. While assessing the compensation in injury cases, the principles of assessment are determined by the Honourable Apex Court in case of **Raj Kumar vs. Ajay Kumar and another, reported in 2011 ACJ 1** wherein the Honourable Apex Court held that Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the

permanent ability. The second steps is to ascertain profession and nature of work before the accident. The third step is to find out whether the claimant is totally disabled from earning any kind of livelihood, or whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on. The Honourable Apex Court has given examples and one of the examples is, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry.

24. Similar is the present case in hand and the claimant is driver and his left leg was amputated above knee. Though the disability is assessed to the extent of 80%, he could not drive vehicles. So, his functional disability is 100%. Taking into consideration his avocation, profession, and nature of work, his disability is 100%. Learned Member of the tribunal had considered the disability at 100% which is just and proper one.

25. The next contention raised by learned counsel Shri H.N.Verma for the insurance company is that without proving the medical bills the compensation was awarded. PW2 Dr.Yogesh Baliram Wargantiwar has proved the bill of Rs.1,76,000/-. There is no dispute that the claimant was indoor patient approximately for three weeks i.e. 19.1.2012 to 8.2.2012. The medical papers, the discharge card, and the disability certificate clearly show that he had sustained the injury like amputation. The evidence is required to be judged upon preponderance of probability. It is well settled that the strict rules of the Indian Evidence Act are not applicable for the compensation cases under the said Act. The medical bills which are produced on record are issued by the Citycare Medicals when the claimant was admitted in the Citycare Superspeciality Hospital, Aurangabad. The fact that the claimant was admitted in the hospital is supported by the discharge card and the evidence of PW2 Dr.Yogesh Baliram Wargantiwar and PW4 Dr.Pawan Pralhadrao Jadhao, who are medical practitioners attached to the Citycare Superspeciality Hospital, Aurangabad. These bills are of medicines prescribed by the doctors. There is no dispute that the

claimant suffered grievous injuries and was treated in Citycare Superspeciality Hospital, Aurangabad. So, these medical bills can be taken into consideration in the light of the evidence of PW2 Dr.Yogesh Baliram Wargantiwar and PW4 Dr.Pawan Pralhadrao Jadhao. Learned Member of the tribunal had considered these bills and awarded the compensation of Rs.3,98,056/-. The said bills are accepted by learned Member of the tribunal on the basis of evidence available on record.

26. Admittedly, the claimant was working as driver. In view of the Minimum Wages Act, 1948, as he was doing the skilled work, learned Member of the tribunal has rightly taken into consideration the monthly income at the rate of Rs.8000/- per month and awarded the compensation. There is no dispute that the claimant suffered permanent disablement. The disablement has incapacitated him from doing the work which he was capable of doing. The work was of driving vehicles. The disability of the claimant was 100%. Learned Member of the tribunal rightly considered this fact and awarded the compensation.

.....19/-

27. In this view of the matter and in view of the principles laid down in the cases *supra*, I do not find any merit in the appeal and the appeal deserves to be dismissed and the same is **dismissed**. No costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

BHUSHAN RANA WANKHEDE

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