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

FIRST APPEAL NO.1431 OF 2009

The New India Assurance Company
Limited, through its Manager
(Legal), having its Regional
Office at 4th floor, Dr.
Ambedkar Bhavan, MECL
Area, Seminary Hills, Nagpur-06. **Appellant.**

:: V E R S U S ::

1. Abdul Ahmed alias Abdul
Kadir, aged about 29 years,
Occupation – driver, r/o
Fakrubad Mohalla, Parabhani,
tahsil and district – Parabhani.

2. Ansari Abdul Akeel Abdul
Gaffar, aged major, r/o main
road, Pathari, district - Parbhani.

3. Shankarrao s/o Ukandrao
Wairagade, aged about 45
years, occupation – labour
work, r/o Chikhali, tahsil Arni,
district Yavatmal. **Respondents.**

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Shri Sandeep Marathe, Counsel for the Appellant.

Shri Bharat Vora, Counsel for Respondent No.3.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 15/02/2023

PRONOUNCED ON : 13/04/2023

JUDGMENT

1. By this appeal, the appellant (the insurance company) challenges judgment and award dated 21.8.2009 passed by learned Member of the Motor Accident Claims

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Tribunal at Darwha (learned Member of the tribunal) in MACP No.56/2007 whereby learned Member of the tribunal directed the insurance company along with respondent Nos.1 and 2 to pay the compensation jointly and severally.

2. Facts in brief necessary for disposal of the case are as under:

On 10.1.2007, the respondent No.3 (claimant) was travelling by commander jeep bearing No.MH-19/G-0693 from Pathari to Hategaon. When the said jeep reached near Hotel 'Gangotri' at Pathari-Majalgaon Road at about 5:15 pm, at the relevant time one another jeep bearing No.MH-28/A-6072 (offending jeep), driven by the respondent No.1 in a rash and negligent manner and in an excessive speed, came and gave a dash to the jeep, in which the claimant was travelling, from the back side. Due to the said dash, the claimant and other passengers were badly injured. The claimant was travelling in the said jeep as *bona fide* passenger. The respondent No.1 was driving his jeep, at the time of the accident in a rash and negligent manner, owned by respondent No.2 and validly insured with the insurance company. Regarding the said

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accident, Pathari Police registered the offence against the respondent No.1 vide Crime No.4/2007. As the said accident took place due to the rash and negligent driving by the respondent No.1, the claimant has claimed the compensation from the insurance company, respondent No.1, and respondent No.2. It is further contention of the claimant that at the time of the accident, he was doing the labour work and earning Rs.3000/- per month. Due to the fracture injuries, he became permanently disabled and lost his working capacity and, therefore, he is claiming compensation Rs.3.00 lacs under various heads.

3. In response to the notice, the respondent Nos.1 and 2 filed their written statement vide Exhibit-20 and denied the contentions of the claimant. The insurance company also resisted the claim by filing a written statement vide Exhibit-19. It is denied by the insurance company that due to the accidental injuries, the claimant has sustained the permanent disablement.

4. To substantiate the contentions, the claimant examined himself and besides his evidence, he placed reliance

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on the police papers that is First Information Report, spot panchanama, discharge card, injury certificate, and disability certificate. Neither the insurance company nor the respondent Nos.1 and 2 has adduced any evidence. On the basis of the evidence, learned Member of the tribunal held that the insurance company and the respondent Nos.1 and 2 are liable to pay the compensation jointly and severally to the extent of 75%. Learned Member of the tribunal held that as the claimant was negligent while sitting in the jeep, he was also contributed for the said accident and ascertained his liability to the extent of 25%.

5. Being aggrieved and dissatisfied with the judgment and award passed by learned Member of the tribunal, the present appeal is preferred by the insurance company on the ground that learned Member of the tribunal erroneously considered the disability certificate. The further ground raised is that in absence of the medical evidence, the compensation was granted to the claimant.

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6. Heard learned counsel Shri Sandeep Marathe for the insurance company and learned counsel Shri Bharat Vora for the respondent Nos.1 and 2.

7. Learned counsel Shri Sandeep Marathe for the insurance company submitted that there is absolutely no evidence to show that due to accidental injuries, the claimant has sustained the permanent disability. In absence of the evidence, learned Member of the tribunal has awarded the compensation which is liable to be set aside.

8. *Per contra*, learned counsel Shri Bharat Vora for the respondent Nos.1 and 2 supported the judgment and award rendered by learned Member of the tribunal and submitted that no case is made out by the insurance company to interfere with the judgment and award rendered by learned Member of the tribunal.

9. After hearing both the sides, following point arises for my consideration is:

Whether learned Member of the tribunal is justified in awarding the compensation to the claimant in absence of medical evidence?

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10. There is no dispute that the respondent No.1 was the driver of the offending jeep and owned by the respondent No.2 and validly insured with the insurance company.

11. By this appeal, only ground raised by the insurance company is that learned Member of the tribunal has awarded the compensation by ignoring the principles of law in absence of any medical evidence.

12. Learned counsel Shri Sandeep Marathe for the insurance company submitted that mere production of the certificate is not sufficient to hold that the disability is proved by the claimant. The claimant has to adduce the evidence to prove the fact that due to the accidental injuries, his working capacity was affected and he is permanently disabled.

13. The claimant has adduced his evidence by examining himself vide Exhibit-26. He categorically narrated about the occurrence of the accident. Besides his oral evidence, he placed reliance on certificate copy of F.I.R. Exhibit-29, spot panchanama Exhibit-30, the medical certificate issued by the Jethliya Hospital at Parbhani Exhibit-31, discharge card of the Medical College and Hospital at

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Aurangabad and disability certificate issued by the medical board Exhibit-37. Though the claimant was cross-examined at length, nothing incriminating is brought on record to falsify his version regarding the disability certificate. On the contrary, the cross-examination shows that the disability certificate is obtained by him from Dr.Yelnare. Rest of the cross-examination is in the denial form.

14. Learned counsel Shri Bharat Vora for the respondent Nos.1 and 2 submitted that the certificate produced on record issued by the medical board is not sufficient to show that the claimant has sustained the permanent disability. The provision under the Motor Vehicles Act is a beneficial legislation. Strict rules of evidence are not applicable. The disability certificate can be read in the evidence.

15. In support of his contentions, learned counsel Shri Bharat Vora for the respondent Nos.1 and 2 placed reliance on the decision of the Gujarat High Court in the case of United India Insurance Company Limited vs. Udaysing Chandansinh Thakor and others, reported in 2006 ACJ 2759 where it is held

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that the disability certificate can be read in evidence without its formal proof.

He further placed reliance on the decision of the Honourable Apex Court in the case of Jithendran vs. New India Assurance Company Limited and another, reported in 2021 SCC OnLine SC 983 wherein it is held that the Motor Vehicles Act is in the nature of social welfare legislation. The appellant has produced adequate medical documents before the High Court to show the recurring needs for testing, treatment and further hospitalization. A person, therefore, is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injuries.

16. I have perused the evidence on record. Admittedly, the claimant has not examined any medical officer or treating doctor to prove the disability. The medical certificate issued by the Jethliya Hospital at Parbhani shows that the claimant has sustained Grade III B compound fracture of "Tibia Fibula". The discharge card issued by the Government Medical College and Hospital shows that the claimant has sustained the

compound "Tibia Fibula" fracture right side. After the accident, the claimant was initially treated by Dr.Jethliya on 10.1.2007 and, thereafter, he was shifted to the Government Medical College and Hospital at Aurangabad and was indoor patient from 11.1.2007 to 26.1.2007. The discharge card of "Shri Chintamani Hospital" also shows that the claimant was admitted in the said hospital from 23.4.2007 to 30.4.2007. Thus, sufficient evidence is on record to show that since the date of the accident i.e. 10.1.2007 till 30.4.2007 the claimant has taken treatment in various hospitals for the injuries sustained by him. He approached to the Government Medical College and Hospital for assessment of the disability certificate. One Dr.Nilesh Yelnare of Yavatmal issued the Disability certificate and ascertained the disability to the extent of 45% to 50%.

17. The Honourable Apex Court in the case of **Raj Kumar v. Ajay Kumar**, reported in **2011 ACJ 1** laid down the guidelines for determination of compensation in injury cases and held that while ascertaining the compensation, the tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability. The

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second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. 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 or whether he was prevented or restricted from discharging his previous activities and functions. The Honourable Apex Court further cautioned the tribunal by observing that if the tribunal proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Honourable Apex Court further held that normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of

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remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.

18. By adopting the above ratio, I am also of the view that the accident took place in the year 2007. No purpose would be served by remanding the matter back to the trial court. Learned Member of the Tribunal accepting the medical certificates has taken into consideration 40% disability and awarded compensation of Rs.2,51,000/-. However, learned Member of the tribunal also held the claimant guilty for contributory negligence and reduced the amount of compensation which is just and fair. The medical certificates on record show that the claimant was under the treatment for approximately four months. The nature of injury is Grade III Fracture compound in nature. Considering the injury sustained by the claimant, there is no difficulty in accepting the percentage of disability and, therefore, I do not find any reason to interfere with the judgment and award passed by learned Member of the tribunal by considering that the

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compensation is claimed under the provisions of social welfare legislation wherein the strict proof is not required. At the time of the evidence, the insurance company has also not raised any objection regarding the genuineness of the disability certificate.

19. In the light of the above discussion, I do not find any reason to interfere with the findings rendered by learned Member of the tribunal. Thus, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**. However, there shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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