



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 3485 OF 2011

New India Assurance Co. Ltd.

.. Appellant

versus

Ashabai w/o Prakash Sonar & another

.. Respondents

Mr. D. P. Deshpande, Advocate for the Appellant.

Mr. S. P. Shah, Advocate for the Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 11th JULY, 2024.

ORDER :

1. Insurer being aggrieved by the impugned judgment passed by the Motor Accident Claim Tribunal has filed this appeal under Section 173 of Motor Vehicles Act taking exception to the judgment dated 16.11.2010 passed in MACP No. 47/2008.

2. The facts as they appear from record indicate that on 12.06.2007, Respondent No. 1 along with her family members was travelling by Indica Car bearing No. MH 19 Q 6213 and when the vehicle reached at the spot of the accident at village Saundane, Tq. Malegaon, a tanker bearing No. MP 09 KD 3041 came from the opposite side in rash and negligent manner and gave forceful dash to

the said car as a result of which the claimant and others were seriously injured. The claimant was admitted in Jeevan Hospital and was thereafter taken to Dr. Nikhil Shah at Dhule. The claimant claims that she was doing labour work and earning Rs. 2,000/- per month. It is her claim that on account of permanent disability caused to her she has lost natural strength and power and has become physically and mentally weak. With these averments, compensation is sought.

3. The owner of the tanker appeared by filing Written Statement denying the allegations made by the claimant including negligence of driver of tanker, suffering of injuries by claimant, medical treatment so also disability.

4. Insurer filed Written Statement denying the age, occupation and income of the claimant. It is also denied that the accident has occurred due to negligent driving of tanker. There is allegation that it is a case of contributory negligence of driver of Indica car in the occurrence of the accident.

5. Learned Tribunal framed issues calling upon the claimant to prove that she has suffered permanent disability in the accident in question and entitlement of compensation. Claimant examined herself and relied upon police papers as well as the disability certificate filed along with Exhibit 27A. Claimant however, did not examine the treating Doctor or Medical Officer who has assessed her disability. On the basis of solitary evidence of claimant, claim petition came to be allowed directing the owner and insurer to jointly and severally pay sum of Rs. 1,58,600/-.

6. Learned counsel for the insurer submits that the Tribunal has committed error in accepting the contention of claimant with regard to causing of permanent disability to her without there being any evidence on record. It is his submission that in absence of examining the Doctor who has issued the certificate of disability, the same could not have been accepted by the Tribunal for the purpose of determining the amount of compensation payable on that ground. It is his further submission that the Tribunal has also committed error in not holding the driver of Indica car equally responsible for occurrence of the accident. In order to support his submissions, he placed reliance on spot panchanama which according to him

indicates that there was contributory negligence of the driver of Indica car in occurrence of the accident. To support his contention, he placed reliance on judgment of Hon'ble Supreme Court in case of Raj Kumar vs. Ajay Kumar and another, (2011) 1 Supreme Court Cases 343.

7. Learned counsel for claimant opposed said submissions by contending that the proceeding before the Tribunal under Motor Vehicles Act are required to be decided summarily and strict rules of evidence are not applicable. It is his further submission that considering the nature of accident and injuries sustained to the claimant, assessment accepted of disability does not deserve any interference. He further argued that having regard to the provisions of Order 4 Rule 25 of Code of Civil Procedure, the claim petition is required to be relegated back to the Tribunal for its decision afresh. To support said submission, he has placed reliance on judgment of Hon'ble Supreme Court in case of Bachahan Devi and another vs. Nagar Nigam, Gorakhpur and another, (2008) 12 Supreme Court Cases 372.

8. No doubt, there is substance in the contention of learned counsel for the claimant that the proceeding before the Tribunal under Motor Vehicles Act for the purpose of determining compensation is summary in nature and strict rules of evidence are not applicable to the same. However, that does not mean that the basic rules of evidence are to be given a complete go by. No doubt, it is open for the Tribunal to decide occurrence of the accident and also decide negligence of drivers of the vehicles on the basis of police papers. In the instant case also , police papers are relied upon by the claimant in order to prove manner in which the accident has occurred. Except for the ocular evidence of claimant coupled with police papers, there is absolutely no evidence led by insurer or owner to prove that the driver of Indica car was responsible for accident to any extent. By relying upon police papers claimant has successfully established the factum of occurrence of accident and on the basis of such evidence, it could be inferred that the accident has occurred due to negligence of driver of the tanker, against whom offence has been registered. The onus, therefore, shifts upon the owner and insurer of the said vehicle to prove otherwise. Admittedly, no evidence is led by them to substantiate the same contention. This

Court, therefore, finds no fault in the Tribunal's findings about driver of tanker being solely responsible for occurrence of the accident.

9. As far as proof of permanent disability caused to the claimant is concerned, the same cannot be proved unless the Doctor who offered treatment or has assessed disability is examined. Merely because the certificate is placed on record along with list of documents, that does not amount to proof of the said certificate. The basic principle of Evidence Act cannot be given go bye. It is the duty of claimant to examine the author of the said certificate in order to prove the same. Apart from this, it needs to be understood that it is not possible for the Tribunal to assess the disability caused to the claimant on account of any fracture injury. It can only be determined only on the basis of x-ray and expert's assessment thereof. In the instant case, for want of examination of Doctor who has assessed disability of the claimant, the disability caused cannot be determined. Hence, finding recorded by the Tribunal with regard to causing permanent disability to the claimant cannot sustain.

10. It is the claim of the claimant that injuries were caused in an accident. Spot panchanama and damages caused to Indica car

sufficient show that the accident was severe in nature. Definitely the impact of the accident must have led to physical injuries to the passengers therein. The claimant has also deposed about her admission in hospital at Malegaon as well as at Dhule. She also has claimed to be indoor patient for some time. It is common knowledge that for admission as indoor patient in any hospital would not cost less than Rs. 5,000/- per day. As such even in absence of any other positive evidence and considering circumstances of the case, an amount of Rs. 20,000/- deserves to be granted to the claimant towards hospitalisation and medical expenses. Needless to say that claimant would not have recovered from the shock/mental injury for at least some period of time and in such case owing to physical and mental injuries, it would not have been possible for her to perform her daily routine as well as performing any work either at home or at work place. In such circumstances, reasonable compensation deserves to be granted which is quantified in this case at Rs. 15,000/-. At the same time, compensation of Rs. 15,000/- is also required to be granted for pain and suffering undergone by the claimant.

11. In view of the aforesaid discussion, the appeal is partly allowed. Tribunal's finding with regard to there being no contributory negligence of driver of car in occurrence of the accident is confirmed. Permanent disability caused to claimant held to be not proved. Hence, claimant is not entitled for any compensation on that count. Impugned award therefore is hereby modified. However, considering the nature of accident and duration of hospitalisation etc. compensation of Rs. 50,000/- is granted. MACP No. 47/2008 stands partly allowed. Claimant is permitted to withdraw a sum of Rs. 50,000/- deposited by Appellant along with accrued interest. Any amount remaining shall be allowed to be withdrawn by Appellant along with accrued interest.

12. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge