



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 485 OF 2015

SHIVAJI S/O MAHADEO BAHIR
VERSUS
CHHAGAN S/O SUDAM GAWAI

M. S. Kokate, Advocate for the appellant
Mr. M. M. Parghane, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 10th JANUARY, 2024

P.C. :-

1. This appeal is filed under Section 173 of the Motor Vehicle Act (for short 'the Act') by respondent owner against award dated 10/04/2014 passed MACP No. 759/2011 whereby the claim petition under Section 166 of the Act filed by the claimant was allowed.

2. Claimant is an Advocate by profession and also an agriculturist. On 13/12/2010 he met with an accident while proceeding on his motorcycle bearing No. MH-20-AP 6798 as a pillion rider. According to him at the time of the accident Tata Indigo Car bearing No. MH-14 AM 4674 came from opposite side in high speed and dashed against his motorcycle resulting into causing of accident. Claimant sustained fracture to his leg and other injuries. He was hospitalized from 13/12/2010 to 19/12/2010 initially at Rural Hospital, Sindhkhedraja and thereafter in Samyak

Hospital, Jalna he was operated and treated there. Rod was inserted in his leg. He claims to have caused permanent disability to him owing to the injuries and claimed damages/compensation of Rs. 4 lakhs. It is averred that offence came to be registered against the driver of the car vide Crime No. I-95/2010. Claim was filed against the owner of the car.

3. Owner appeared before the Tribunal and by filing written statement denied the contentions of the claimant. It is alleged that the accident in question has occurred due to the negligence of the rider of the motorcycle and that no fault can be attributed to the driver of the car. Contentions of the claimant about causing of injuries, hospitalization treatment, income etc were denied.

4. Tribunal framed issues at Exhibit 19. Claimant examined himself and relied upon police papers i.e. FIR, spot panchnama, accident form, injury certificate, discharge card, medical bill, driving license etc. He also examined his wife at Exhibit 36 and Dr. Jinturkar at Exhibit 40. The owner examined himself at Exhibit 90. Learned Tribunal accepted the claim of the claimant and directed owner to pay compensation of Rs.2,35,200/- along with interest at the rate of 9% per annum to the claimant.

5. Being aggrieved by the said award present appeal is filed with the

contentions that the Tribunal has failed to consider the fact that negligence of the rider of the motorcycle is also involved in accident and as such the entire negligence ought not to have been attributed to the driver of the car. It is also contended that on the basis of evidence on record Tribunal has committed error in considering the injuries and permanent disability of the claimant. Award is also challenged on the ground being excessive, including the interest granted at the rate of 9% per annum.

6. The initial burden on the claimant to prove that accident in question has occurred due to the negligence of the driver of the car. In order to prove the same claimant examined himself at Exhibit-21. Claimant being pillion rider has witnessed the accident. He deposed candidly about the driver of the car coming in high and excessive speed from opposite direction and giving dash to the motorcycle. To further support his contention claimant has relied upon first information report lodged against the driver of the car and spot panchnama. During the cross-examination of claimant nothing is elicited by the owner in order to create doubt about his version of occurrence of incident. Claimant has further deposed about causing of injuries to him. The injuries caused to him and treatment taken by him is duly proved by examining witness i.e. Dr. Jinturkar (Exhibit 40). Once claimant discharges burden upon him to

prove the accident, negligence of the driver of the offending vehicle and causing of injuries, the onus shifts on the owner to prove otherwise. Though owner examined himself at Exhibit 90 since he is not witness to the accident his evidence cannot be considered for the purpose of deciding the manner in which the accident has occurred the owner therefore has failed to prove otherwise. On the basis of evidence on record learned Tribunal has rightly come to the conclusion that the accident has occurred solely due to the negligence of the driver of the car. Apart from this, claimant was pillion rider on the motorcycle and hence not responsible for accident in any manner. It is choice of the claimant to seek damages / compensation from joint for feasons from both or any one of them. Thus, non joinder of the rider and the owner of the motorcycle does not affect maintainability of the claim. Moreover, there is no material on record to hold that the driver of the motorcycle contributed in occurrence of the accident.

7. Claimant is an Advocate by profession. In order to prove the same he placed on record certificates of practice issued by Secretary of District Bar Association, Aurangabad as well as by Principal District and Sessions Judge, Aurangabad. There is no dispute made by the owner of the said fact. Apart from this it is the case of the claimant that he has family agricultural land and also was working there and deriving income

therefrom. Learned Tribunal has considered the income of the injured at the rate of Rs.9000/- per month. The claimant had put in 2 years and 4 months of practice on the date of accident. Though it is true that for any professionals including an Advocate require some time to establish in the profession. However, at the same time it is matter of common knowledge that even junior lawyers earn by assisting the Senior colleagues by doing work of drafting, filing of the proceeding and also by doing other miscellaneous work. In such circumstances in the year 2015 if the average income of even a lawyer is considered at Rs.9000/-, the same cannot be held to be excessive.

8. As far as the causing of injuries and permanent disability caused to the injured is concerned, claimant has examined Dr. Jinturkar who is Orthopedic Surgeon and had issued injury certificate at Exhibit 41. According to him on 19/12/2010 claimant with fracture of tibia fibula on right side was operated with nailing on 15/12/2010. He issued discharge card (Exhibit 86) and injury certificate (Exhibit 87). He assessed disability of the claimant and disability certificate (Exhibit 84) is issued. Tribunal has considered nature of injuries caused to the claimant, has accepted permanent disability to the extent of 8%. The said finding recorded by the Tribunal cannot be held to be perverse having regard to the evidence of Dr. Jinturkar. In the cross-examination though he has

accepted the fact that patient is completely recovered, however, he denied the suggestion that no permanent disability is caused to the claimant. Having regard to the facts and circumstances of the case, Tribunal has awarded compensation on the various said including loss of income, further operation, medical expenses, future medical expenses, pains and suffering and conveyance. This Court therefore finds no perversity in the said assessment done by the Tribunal.

9. Section 171 of Motor Vehicle Act gives discretion to the Tribunal to direct payment of interest on the amount of compensation determined from the date of filing of the claim. Though the phrase may is use therein, however, considering the fact that the claimant is deprived/denied of the rightful compensation and hence the interest must be awarded on compensation amount. In the present case, interest at the rate of 9% is awarded by the Tribunal, which is not excessive.

10. In view of above discussion, no interference is called for in the impugned judgment and award. Hence, appeals stands dismissed. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp