



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 583 OF 2020

Baban s/o. Dhondiba Shinde .. Appellant
Age. 49 years, Occ. Driver,
R/o. Kasara Dumala, Tq. Sangamner,
Dist. Ahmednagar.

Versus

The Divisional Manager .. Respondent
Maharashtra State Road Transport
Corporation Ltd., at Sarjepura,
Tq. & Dist. Ahmednagar.

Mr.K.N. Shermale, Advocate for the appellant.
Mr.B.S. Deshmukh, Advocate for the sole respondent.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 19.06.2024
PRONOUNCED ON : 26.06.2024

J U D G M E N T :-

01. This Court by order dated 05.09.2022 had called for record and proceedings and had fixed the appeal for final hearing on 13.09.2022. Thereafter, it was heard on 13.09.2022 and adjourned for further arguments to 27.09.2022. It was further adjourned to 10.11.2022 as part-heard. The parties are thus ready for final hearing at the stage of admission.

02. Heard the learned Advocates for the parties. Perused the record and proceedings. Taken up for final disposal by the consent of the parties.

03. This appeal arises out of the judgment and order passed by the learned Member, Motor Accident Claims Tribunal, Sangamner dated 13.11.2018 in MACP No. 88 of 2014. The appellant is original claimant, whose claim petition came to be partly allowed by the learned Member, directing the respondent to pay compensation of Rs. 4,92,000/- including the amount of 'no fault liability' with interest @ 8% p.a. from the date of filing of the claim petition till realization of the amount.

04. The claimant is aggrieved by the judgment to the extent of not allowing the claim in its entirety. The claimant had prayed for compensation of Rs.15 lakhs, claiming that he has sustained 90% permanent disability and thus his capacity to work is lost by 90%. The second ground is that the learned Tribunal has held the claimant liable for contributory negligence. The third ground raised is about non-grant of future medical expenses.

05. The facts in short are that the claimant was working as a driver.

On 01.01.2014 is was riding on motorcycle with his nephew. He was proceeding from Nashik to Sangamner on motorcycle bearing registration No. MH-17-AV-5245. When he was in Mohadari Ghat near Ganpati temple, he met with an accident. The offending vehicle i.e. State Transport bus bearing registration No. MH-14-BT-1043 came in high speed. The driver was driving the bus in rash and negligent manner. Because of the dash, the claimant fell down from the motor-cycle and sustained multiple injuries. The driver of the bus lodged complaint with the police after the accident, in which the driver of the bus stated that the claimant dashed the bus when the claimant was trying to overtake a truck and the same is the defence of the respondent.

06. The learned Member of the Tribunal held that it is a case of contributory negligence. He has accepted that the functional disability is to the extent of 40% and not 90%. About future expenses, same is not granted.

07. The learned Advocate Mr. Shermale for the claimant vehemently argued the matter. He submits that the learned Tribunal granted lump-sum compensation without considering the medical expenses, loss of future income, pain and sufferings and expenses for special diet. He further argued

that the claimant in his evidence has clearly stated that it is the offending vehicle, which was coming from opposite direction in high speed, gave dash to the motor-cycle and this evidence is not accepted. The claimant has suffered 100% functional disability and the same is not appreciated by the learned Tribunal. Though the learned Tribunal has accepted that the claimant has suffered injuries, the learned Tribunal has not granted compensation towards loss of future prospectus. He thus stated that the judgment suffers from illegality on these three counts.

08. The learned Advocate for the respondent opposes the appeal stating that it is clearly a case of contributory negligence. The claimant has not produced on record a driving licence to prove his case that he was working as a driver. The claimant also failed to prove that he is unable to work. Clear suggestion was given in the cross-examination that at the time of accident, the claimant was overtaking the truck. He has also further admitted that the spot where the accident took place is a ghat section and there is always rush of the vehicles.

09. On these submissions, this Court has gone through the judgment

and the evidence. So far as evidence of PW-1 claimant is concerned, he has stated that he was working as a driver on a goods carrier with one Jolly Transport Ltd., Pune. He was receiving salary of Rs.10,000/- per month and Rs.150/- towards daily allowance. The bus was in high speed and the bus driver could not control the bus and gave dash to the motor-cycle. There is FIR lodged about the accident. He produce on record the certificate issued by Dr.Dange (PW-2). He also stated about treatment he took at various hospitals and that he was required to pay more than Rs.1 lakh. He received functional disability to his right leg and right hand. He cannot do a job of a driver again.

. In the cross-examination, he accepted that he has not produced on record his driving licence. He accepted that he came to Court by walk. He could not state as to what statements are recorded by police in the complaint filed by him. He could not state that whether any other person has seen the accident.

10. PW-2 Dr. Dange, who was examined by the claimant stated that in the year 2014 he was attached to Tambe Hospital, Sangamner. On 08.01.2014 the claimant was admitted in the said hospital and he was treated by this Doctor. The claimant has received fracture to his right femur, right

tibia, right clavicle with brachial plexus injuries and thus this witness issued the injury certificate. He stated that the petitioner is suffering from permanent disability to the extent of 90%. In view of the disability, the petitioner is unable to work as a driver.

. In the cross-examination, he stated that he has mentioned in the certificate that the claimant is a driver at his instance. He accepted that the certificate does not bear registration number and seal of this witness. The thumb impression on the certificate is also not attested.

11. Third witness examined on behalf of the claimant is one Vilas Hinge working with Jolly Transport Ltd.. In his evidence, he has stated that the claimant was working as a driver. He was paid salary of Rs.10,000/- in cash. After the accident, he did not come on his job for two years and now he is not working as a driver.

. In the cross-examination, he stated that no register of the employees is kept in the office of the transport company. There is no muster and salary register maintained, though it is mandatory under the law. He could not produce any document to show that the applicant was working with Jolly Transport.

12. The respondent has examined only one witness i.e. Mahendra Sonawane, a driver working on the offending bus. In his evidence he stated that he was driving the bus with due care. When the bus came to Mohadari Ghat, the bus was in moderate speed. One motor-cycle came from the opposite direction overtaking a truck. The said motor-cycle came on the right side of the bus and was trying to overtake the truck from middle of the truck and the bus. The bus therefore turned towards south side extreme edge of the road. The rider of the motor-cycle could not control speed of the motor-cycle and dashed right side front wheel of the bus. This witness took the rider of the motor-cycle to hospital and lodged FIR with Sinnar Police Station. In the cross-examination, nothing much is taken.

13. The learned Member on the basis of this evidence came to a conclusion that it is a case of contributory negligence. There is functional disability to the extent of 40%. The learned Tribunal considered 30% negligence on the part of the claimant. The loss of earning is taken to be Rs.6,24,000/- - 1,87,200/- (30% towards contributory negligence). Thus Rs.4,36,800/- is granted towards future loss of income. Rs.22,400/- is

awarded towards hospital and medicine expenses, Rs.7000/- is awarded towards special diet, Rs. 10,000/- is awarded towards conveyance and towards pain and suffering an amount awarded is Rs.15,000/-. Thus, total rounded off amount of Rs.4,92,000/- is awarded.

14. Coming to the judgment cited by the claimant, first judgment is in the case of **Mangla Ram Vs. Oriental Insurance Co. Ltd., 2018 AIR SCW 1900.** In the said case, there was no evidence of negligence on the part of the rider of the motorcycle. The respondent also did not produce any evidence. In that case the Hon'ble Apex court held that it cannot be taken as contributory negligence. In the present case, however, the FIR immediately lodged with the police shows that it is the claimant, who was overtaking a truck in the ghat. The claimant himself has admitted in his cross-examination that the road was a single lane. In the cross-examination of the driver of the bus, there was also suggestion given about the presence of the truck. The learned Tribunal rightly held that the evidence of the driver is consistent with the statement in the FIR. The learned Tribunal has still held the extent of contributory negligence only to the extent of 30%. This Court does not find any perversity in the findings.

15. The next judgment cited is in the case of **Mohammed Siddique & Ors. Vs. National Insurance Co. Ltd. & Ors., (2020) AIR (SC) 520.** It was a case where the Apex Court held that the violation of law by itself leads to contributory negligence. A person cannot be held liable for contributory negligence. In the present case, it has come in the evidence that it is this motor-cycle, who was trying to overtake a truck. Thus, this fact needs to be considered. Considering this, it is clear case of contributory negligence.

16. In the case of **Namrata Anil Yadav & Ors. Vs. Bhupendra Manohar Bhoir & Anr., F.A. No.463 of 2020,** this Court at Principal Seat at Mumbai recorded that there was no evidence to show negligence on the part of the claimant.

17. On the point of permanent disability, the learned Advocate for the appellant relied upon judgment in the case of **Jitendran Vs. The New India Assurance Co. Ltd., (2021) AIR (SC) 5382.** In the said case there was evidence to show that the injured has suffered 69% permanent disability and is unable to perform regular activities. He was requiring constant support

even in the confined life. In that case, the Hon'ble Apex Court has considered that the loss of income needs to be taken as 100% as the claimant had become permanently incapacitated from doing any work. In the present case, the claimant was in a position to move. He accepted that he came to Court on his own without any support. Therefore, the judgment in the case of Jitendran (supra) is not applicable to the present case.

18. In the case of Pappu Deo Yadav Vs. Naresh Kumar & Ors., (2020) AIR (SC) 4424, the Tribunal had awarded compensation for loss of future prospectus. The High Court refused the said amount on the principles of proportionality. There the assumption of disability was claimed to be 89%, which was considered to be 45% by the High Court. The Hon'ble Apex Court assessed the same at 65% in the circumstances of that case. This Court does not find that the said judgment is applicable to the present case.

19. So far as functional disability is concerned, the learned Advocate relies on the judgment in the case of Jakir Hussein Vs. Sabir & Ors., (2015) AIR (SCW) 1496. In that case, there is specific finding recorded that the claimant would never be able to work as a driver and in that case loss of

earning capacity was considered to be 100%. This judgment needs to be considered in the light of the present facts. In the present case, the applicant on one hand has not produced any document or even driving licence to show that he was working as a driver. Witness No.3, who was working with Jolly Transport also could not produce a single document to show that the claimant was working as a driver with the said transport. Thus, the very fact that the claimant was working as a driver is not proved. Thus, even the judgment in the case of **Jakir Hussein (supra)** is not applicable to the present case.

20. Coming to the point of compensation for pain and suffering, the learned Tribunal has awarded an amount of Rs.15,000/-. This Court finds that the claimant had suffered various injuries. Though the claimant could not prove exact extent of disability, the learned Tribunal has rightly considered it to be 40%. An amount of Rs.15,000/- towards pain and suffering appears to be too meager. It ought to have granted Rs.1,00,000/-. Since Rs.15,000/- towards pain and suffering is already awarded, it would be appropriate to award Rs.85,000/- more to the appellant. No other modification needs in the impugned order. Hence, the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant-claimant shall be entitled to Rs.85,000/- (Rupees Eighty Five Thousand) over and above the award passed by the learned Tribunal. Rest of the award is maintained as it is.
- (iii) The award be modified accordingly.
- (iv) The respondent-insurance company shall pay Rs.85,000/- (Rupees Eighty Five Thousand) to the appellant-claimant with interest @ 8% p.a. from the date of filing of the claim petition till its realization.

[KISHORE C. SANT, J.]