



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

FIRST APPEAL NO.2369 of 2018

National Insurance Company Ltd.
A Subsidiary of General Insurance
Company of India Ltd. having
one of its divisional office at
Station road Aurangabad Through
Its authorized signatory

... Appellant
(Org. R.No.2)

Versus

- (1) Santosh Banshi Kudale,
Age 35 yrs, Occ. Service & agr.
Through next friend
Sonali Santosh Kudale,
Age 30 yrs, Occ. Household
r/o Narayangavhan,
tk. Parner, Dist. Ahemadnagar
- (2) Bansi Dhanaji Alhat,
Age 50 yrs, Occ. Business
r/o Kedar Vasti, Solapur road
Ahemadnagar

...Respondents
(R.No.1- Org.clmt
R.No.2- org.R.No.1)

.....

Mr. Ajit B. Kadethankar, Advocate for Appellant
Mr. V. P. Latange, Advocate for Respondent No.1
Mr. P. H. Sukale, Advocate h/f Mr. N. B. Narwade, Advocate for
Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 04th SEPTEMBER, 2024
PRONOUNCED ON : 04th OCTOBER, 2024**

JUDGMENT :

1. Heard.
2. Admit. Taken up for final hearing with the consent of the parties.

3. This appeal filed by Insurance Company under Section 173 of the Motor Vehicles Act, challenges judgment and award dated 21/04/2018, passed by the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No.141/2015.

4. Brief facts leading to the appeal can be stated thus:

On 26/07/2014, at about 05:00 a.m. claimant Santosh Kudale was proceeding from Narayangavhan to Ahmednagar on motorcycle bearing No.MH-17-L-1960 along with his nephew Bhushan Kudale being a pillion rider. When they reached near village Mhasne-Fata on Pune-Nagar road, one Tata Magic bearing No.MH-16-AT-4079 coming from Nagar to Pune, without giving any signal suddenly turned to right side from the gap provided in the divider and proceeded towards petrol pump of opposite side. As the Tata Magic suddenly crossed the road, motorcycle of claimant Santosh dashed against said vehicle. He sustained grievous injury to his head, he also sustained other injuries and became unconscious. After accident claimant was taken to Omkar Hospital, Supa and from there to City Care Hospital, Ahmednagar. Thereafter he was shifted to Ruby Hall Clinic, Pune and was admitted there from 26/07/2014 to 28/07/2014. He underwent various critical operations of brain. After discharge from there, he was admitted in Manikchand Hospital, Shirur, on 29/08/2014. He lost control over his brain. He was again admitted in Sancheti Hospital, Pune, on

03/09/2014 and underwent surgery of skin grafting and was discharged on 08/11/2014. Thereafter he took treatment as outdoor patient. He filed claim petition claiming compensation of Rs.50,00,000/- including Rs.15,00,000/- towards medical expenses incurred by him.

5. Owner of the offending vehicle failed to file written statement. Insurance Company resisted the claim by filing written statement, contending that claimant was rash and negligent in driving the motorcycle and he himself gave dash to Tata Magic at the end of crossing. Excessive compensation is claimed by claimant.

Tribunal allowed the claim and directed the owner and Insurance Company to jointly and severally pay compensation of Rs.77,08,566/- along with 8% interest to claimant. Insurance Company is aggrieved by this decision.

6. Heard learned advocate for appellant/Insurance Company, learned advocate for respondent No.1/claimant and learned advocate for respondent No.2/owner of the offending vehicle.

7. Learned advocate for appellant/Insurance Company assailed the findings recorded by Tribunal contending that there is clear-cut contributory negligence on the part of claimant and therefore, the Tribunal ought not to have fastened the liability on

Insurance Company. Considering the evidence of doctor who is examined by claimant, this cannot be said to be a case where claimant has lost his total earning capacity, as admittedly the disability certificate shows that claimant has suffered 50% disability. In spite of the fact that as per the material brought on record claimant was appointed as Shikshan Sevak and was getting monthly salary of Rs.8,000/-, Tribunal has erroneously held that after completion of three years continuous service he would have appointed as regular teacher and his salary would be increased to Rs.35,000/- to Rs.40,000/-. He, therefore, submits that excessive compensation is awarded by the Tribunal and the same is required to be reduced. In support of his submissions, he relied on ***National Insurance Co. Ltd. vs. Pranay Sethi and Others, 2017 (16) SCC 680.***

8. Learned advocate for respondent No.1/claimant, on the other hand, supported the impugned judgment and award. It is submitted that, but for the accident claimant would have been appointed as Assistant Teacher and would have earned salary of Rs.35,000/- to Rs.40,000/- per month, which is rightly considered by the Tribunal. He submits that material on record does not indicate any contributory negligence on the part of claimant. There is no merit in the appeal and the same deserves to be dismissed. In support of his submissions, he relied on ***V. Krishnakumar Vs.***

State of Tamil Nadu and Others, 2016(2) Mh.L.J. 555, and Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust and Others, 2007(6) Mh.L.J. 659.

9. Learned advocate for respondent No.2/owner of the offending vehicle submits that offending vehicle was insured with appellant and therefore, it is liable to pay the compensation.

10. Heard learned advocate for appellant/Insurance Company, learned advocate for respondent No.1/claimant and learned advocate for respondent No.2/owner of the offending vehicle, at length. Perused the record and citations relied upon by the respective parties.

11. It is a matter of record that FIR at C.R. No.I-73/2014 was lodged against driver of the offending vehicle with Supa Police Station, which is registered for offence punishable under Sections 279, 337, 338, 427 of Indian Penal Code and Sections 184, 177, 134(a) and (b) of the Motor Vehicles Act. After completion of investigation charge-sheet is filed against driver of the offending vehicle. The accident appears to have occurred as the offending vehicle took sudden turn and crossed the highway. There appears no material on record to support the contention of Insurance Company that there was contributory negligence on the part of claimant. Claimant by examining himself in support of the claim has

brought on record the fact that offending vehicle without giving any signal or indicator suddenly took right turn and started crossing highway for going towards the petrol pump, because of which the accident has taken place. This material on record is sufficient to indicate that accident had taken place due to rash and negligent driving on the part of driver of offending vehicle. Therefore, there is no merit in submission of Insurance Company that there was contributory negligence on the part of claimant.

12. Claimant has brought evidence on record to show that he has completed. M.A., B.Ed. and was appointed as Shikshan Sevak in Vagheshwar Vidyadham of Shirur Shikshan Prasarak Mandal, Mandavgan Farata, Tal. Shirur, District Pune, just before few days of accident and he was getting Rs.8,000/- per month by way of salary. After completing three years service as Shikshan Sevak, he would have been appointed as full time teacher in High School and would have earned salary upto Rs.35,000/- to Rs.40,000/- per month. In future he could have got promotion and his salary would have been increased many times.

13. Sub-section (2A) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (3 of 1978), provides that,

“(2A) Subject to the provisions of sub-sections (3) and (4), Shikshan Sevak shall, on completion of the

probation period of three years, be deemed to have been appointed and confirmed as a teacher.”

14. In the light of aforesaid provision and considering the claimant's salary certificate placed on record (Exhibit-36), no fault can be found with the assessment of monthly income of claimant at Rs.35,000/-.

15. In support of claim, claimant has examined Dr. Bharat Naik, who is having M.B.B.S., Mc.P.S.D. (Ortho), D.N.B. (Ortho), M.C.H. (Neurosurgery) and has issued certificate that claimant has suffered 50% permanent disability. In evidence, he has stated that claimant could not lead his normal life due to the grievous injuries to skull and brain. He cannot go here and there alone. He cannot walk for some distance. He cannot speak also. He cannot do his day-to-day work and activities. He is not in a position to do any intellectual or physical work. Considering this evidence, the Tribunal is justified in holding that there is 100% functional disability suffered by claimant and awarding compensation of Rs.67,20,000/- plus hospital expenses of Rs.8,48,566/-, proved on record by claimant.

16. In **V. Krishnakumar** (supra), it is held,

“17. The principle of awarding compensation that can be safely relied on is restitutio in integrum. This principle has been recognized and relied on in Malay Kumar Ganguly vs. Sukumar Mukherjee, (2009) 9 SCC 221, and in Balram Prasad Vs. Kunal Saha, (2014) 1 SCC 384, in the following passage from the latter:

“170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See Livingstone v. Rawyards Coal Co.).”

An application of this principle is that the aggrieved person should get that sum of money, which would put him in the same position if he had not sustained the wrong. It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the event.”

The above observations support the case of claimant.

17. Considering the facts of this case, decision in ***Pranay Sethi*** (supra), does not help the case of appellant.

18. Tribunal has passed a well reasoned judgment and award, which is not liable to be interfered with. The appeal being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)