



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 FIRST APPEAL NO. 412 OF 2018
WITH
CIVIL APPLICATION NO. 10831 OF 2023
IN FA/412/2018

DILIP SHANTILAL GUGALE
VERSUS
ARUN MHALU BHALERAO AND ANR

...

Mr. S. V. Suryawanshi h/for Mr. L. B. Palod, Advocate for Appellant
Mr. Shaikh Ashraf Patel, Advocate for Respondent no.1.

CORAM : Y. G. KHOBRAGADE, J.
DATE : 4th April, 2024

ORDER:

1. Heard the learned Advocate for the appellant and learned counsel appearing for respondent no.1.
2. By the present appeal under section 173 of the Motor Vehicles Act, the appellant-original claimant challenges the judgment and award dated 17.09.2016 passed by the learned Member, Motor Accident Claims Tribunal, Kopergaon in MACP No. 56 of 2013.
3. The grievance of the appellant is that he is goldsmith. On 30th May, 2012, at about 8.15 p.m. he was proceeding to his village Kolhar on Nashik-Nagar road in his Tavera Jeep bearing Registration No. MH17-T-386. He himself was driving the vehicle. At that time one Indica Car bearing Registration No.MH15-CT-0862 came from opposite directions and gave severe dash to his vehicle due to which, he

sustained some injuries and was hospitalized In Siddhivinayak Hospital at Sinner. Subsequently he was shifted to Dr. Sancheti Hospital at Pune. He incurred Rs. Three Lakhs towards medical expenses. According to the claimant, said accident took place due to negligence on part of the respondent No.1 driver and owner of Indica Car. Hence prayed for compensation to the tune of Rs.3,80,000/-.

4. The respondents/opponents filed their reply written statements at Exh 13 and 21 respectively and denied claim of the claimants. According to the respondents, the accident took place due to sole negligence on the part of the claimant. The claimant drove his Tavera Car by wrong side and he himself gave dash to Indica Car of the Respondent No.1, hence, prayed for dismissal of the petition.

5. On the basis of rival pleadings of both sides, the learned Member of the Tribunal framed issues at Exh. 24. The claimant/appellant examined himself at Exh. 24 and Medical Officer Dr. Deepak Naikwade at Exh. 39. Respondent No.2 examined witness- Arun Bhalerao- Driver of Indica Car. After hearing both sides and considering the evidence available on record, the learned Member, MACT held that oral evidence of respondent No.1 supports the spot panchanama Exh. 46 and the said accident was took place due to sole negligence on the part of the claimant. Therefore, as per provisions of Section 166 of the MV Act, the liability based on negligence has not been proved.

6. No doubt, Crime No. 177 of 2012 was registered against the present appellant/claimant for the offence punishable under Section 279, 338, 337, 427 of the Indian Penal Code and Section 184 of the Motor Vehicles Act. It is not in dispute that vide judgment and order dated 4th September, 2017, the present appellant acquitted for the said offence. However, it does not mean that the claimant was not negligent while driving the vehicle. The degree of evidence in civil as well as criminal proceeding is different. The present appellant came to be acquitted for the said offence due to benefit of doubt about driving of Car in negligence manner. However, while fixing liability under Section 166 of the Motor Vehicles Act, the degree of evidence is required to be considered. As per spot panchanama and contents of FIR, it appears that the appellant was proceeding from western side i.e. from Nashik side and Indica car was proceeding from east to west direction and the Tavera Jeep of the appellant came from wrong side and caused the accident.

7. It is trite settle principles of law that under tortious liability no one can claim compensation for his own wrong. The claimant/appellant has not produced any substantial material on record to prove that the accident was caused due to sole negligence on the part of respondent no.1. Under the circumstance, I do not find that the

findings recorded by the learned Member of the MACP are perverse or illegal.

8. In view of the above, the present appeal is dismissed. No order as to costs. Pending civil application also stands disposed of.

(Y. G. KHOBRAGADE, J.)

JPChavan