



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 192 OF 2016

Balasaheb S/o. Pandharinath Navtakke
Age: 37 years, Occu: Advocate,
R/o. Yeshwant Societys, Udgir,
Tq. Udgir, Dist. Latur.

...APPELLANT

VERSUS

1. Shivaji S/o Raman Kadam,
Age: Major, Occ. Business,
R/o. Wadhona (B), Tq. Udgir, Dist. Latur,
(Owner of offending vehicle bearing
Reg. No. MH-24/2896).

2. Balasaheb S/o. Dattatraya Pandilwad
Age: Major, Occu. Driver,
R/o. Halli, Tq. Udgir, Dist. Latur.

3. ICICI Lombard General Insurance Co. Ltd.
Through its Branch manager,
Branch Aurangabad.
(Insurance Police valid from 28.04.2006
To 27.04.2004 by its over note 157779).

...RESPONDENTS

AND

FIRST APPEAL NO. 205 OF 2016

Pandharinath S/o. Malhari Navtakke
Age: 59 years, Occu: Agri,
R/o. Yeshwant Societys, Udgir,
Tq. Udgir, Dist. Latur.

...APPELLANT
[Orig. Claimant]

VERSUS

1. Shivaji S/o Raman Kadam,
Age: Major, Occ. Business,
R/o. Wadhona (B), Tq. Udgir, Dist. Latur,
(Owner of offending vehicle bearing

Reg. No. MH-24/2896).

2. Balasaheb S/o. Dattatraya Pandilwad

Age: Major, Occu. Driver,

R/o. Halli, Tq. Udgir, Dist. Latur.

3. ICICI Lombard General Insurance Co. Ltd.

Through its Branch manager,

Branch Aurangabad.

(Insurance Police valid from 28.04.2006

To 27.04.2004 by its over note 157779). ...**RESPONDENTS**

[Orig. Respondents]

Mr. Ram S. Shinde, Advocate for appellant

Mr. Rohit Dahat, Advocate for respondent No. 3

Respondent Nos. 1 and 2 served

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 9th SEPTEMBER, 2024

PRONOUNCED ON : 9th OCTOBER, 2024

JUDGMENT :

1. Heard.

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

3. Both these appeals filed by claimants arise out of same accident, hence, they were heard together and are being decided by this common judgment.

4. These appeals filed by claimants challenge the judgments and awards dated 10.09.2015 passed by learned Member, Motor Accident Claims Tribunal, Udgir, in M.A.C.P. Nos.

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110 of 2010 and 111 of 2010.

5. On 12.11.2006 at about 2.00 am, Balasaheb and his father were going towards Hippalner in Omni car bearing No. MH-12-FA-507. At that time, offending tractor No. MH-24-2896 driven by the 2nd respondent came from opposite side and gave forceful dash to the Omni. Balasaheb and his father sustained grievous injuries including fracture to the legs. Balasaheb was moved to Komal Hospital and was indoor patient from 12.11.2006 to 17.11.2006 and thereafter he took followup treatment from Jai Santoshi Mata Accident Hospital, Udgir.

6. Claimant- Balasaheb is a practicing advocate. He filed M.A.C.P. No. 111 of 2010 and claimed compensation of Rs. 9,20,000/- contending that he has sustained loss of income of Rs. 6,00,000/- besides medical expenses, travelling expenses, attendant expenses, pain and sufferings, special diet, etc.

Claimant- Pandharinath is agriculturist. He filed M.A.C.P. No. 110/2010 and claimed compensation of Rs. 9,20,000/- (in the claim petition and in the prayer clause Rs. 1,20,000/- is stated) contending that he has suffered 15% permanent disability due to which he is unable to do heavy work.

7. The Tribunal partly allowed the claims and awarded

Rs. 1,00,000/- to claimant Balasaheb along with interest @ 10% p.a. and Rs. 75,000/- to claimant- Pandharinath along with interest @ 10% p.a. Both these first appeals are filed for enhancement of compensation.

8. Heard learned advocate for claimants and learned advocate for insurance company.

9. Learned advocate for the claimants submits that Tribunal has awarded meager compensation ignoring disability suffered by claimants. The observation of the Tribunal that driver of the offending tractor was not holding valid license on the date of accident and therefore, insurance company is liable to be exonerated is erroneous. By relying on Section 15 of Motor Vehicles Act, he states that 30 days grace period is available for renewal of license and within this period of 30 days license is renewed. In this view of the matter, at the most, Tribunal could have directed the insurance company to pay compensation and recover it. The Tribunal, therefore, ought not to have exonerated the insurance company. He submits that claimant Balasaheb is a practicing advocate and due to disability suffered by him, he is not in a position to stand for a longer period on his legs and it therefore obstructs his free working as an advocate. Therefore,

Tribunal ought to have awarded more compensation to claimant Balasaheb.

In the case of Pandharinath he submits that claimant Pandharinath has suffered 15% permanent disability, which has affected his agricultural work. Ignoring this aspect, Tribunal has awarded meager compensation of Rs. 75,000/-. In support of his case, he relied on *Parminder Singh vs. New India Assurance Company Limited and Others*, (2019) 7 SCC 217 and *Rishi Pal Singh vs. New India Assurance Co. Ltd. & Ors.*, (Civil Appeal No. 4919 of 2022).

10. Learned advocate for the insurance company, on the other hand, supported the impugned judgment and award to the extent it exonerated the insurance company from paying compensation.

11. Heard learned advocate for claimants and learned advocate for insurance company at length. Perused the record and the citations relied upon by the claimants.

12. Section 15 of Motor Vehicles Act provides for renewal of driving licence. Sub Section 3 of Section 15 provides that if application for renewal of driving licence is made within 30 days of its expiry (as the provision stood prior to amendment of 2019

by which 30 days period is substituted by one year) it shall be renewed from the date of its expiry and if application for renewal is made after the 30 days and before five years of its expiry, it shall be renewed from the date of such renewal.

13. Admittedly, in these matters driver of the offending tractor was holding valid licence for the period from 31.10.2003 to 30.10.2006 and thereafter from 16.11.2006 to 15.11.2009. It is therefore obvious that he has renewed his driving licence within a period of 30 days as prescribed under Section 15 of M.V. Act, and his licence is renewed from the date of its expiry i.e. from 30.10.2006. Thus, he was holding valid and effective driving licence on the date of accident in view of Section 15 of M.V. Act. The adverse finding recorded by the Tribunal that on the date of accident i.e. on 12.11.2006 driver of offending tractor was not holding valid and effective driving licence is erroneous and same is unsustainable.

14. In Rishi Pal Singh (supra), it is held that, "*the owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is*

not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver."

Above observations support the case of claimant.

15. Much is argued by learned advocate for the claimants in respect of permanent disability suffered by claimant-Balasaheb. It appears from the record that he had suffered fracture to his right leg. Dr. Pravin (CW2) in his evidence has stated that claimant Balasaheb has suffered 24% permanent disability. In cross examination he admitted that disability is limb wise and all the fractures are united and he cannot assess occupational disability as the claimant is an advocate. Learned advocate for the claimants vehemently submitted that due to 24% disability, Balasaheb is facing obstruction in free working as an advocate. But there is no material on record in support of said contention. Admittedly, fracture is united, at the most, it can be said that Balasaheb had occupational disability during the period of treatment till his plaster was removed. Though, Balasaheb has stated in his affidavit on evidence that he cannot sit and work for longer period, there is no material on record to support said contention, Doctor has not supported this contention. The Tribunal has observed that there is no specific

evidence on record to show that Balasaheb was indoor patient for few days and he has suffered functional disability during that period. The Tribunal, therefore, awarded lumpsum compensation of Rs. 1,00,000/- to Balasaheb.

16. Taking into consideration the injuries suffered by Balasaheb, the judicial notice can be taken of the fact that minimum three weeks period is required to recover from fracture and for removal of plaster.

17. It has come in the evidence of Balasaheb that he was indoor patient between 12.11.2006 to 27.11.2006 at Jaysantoshimata accident hospital and thereafter he was taking treatment as outdoor patient. Dr. Pravin Patil examined by Balasaheb has stated in his evidence that Balasaheb is not able to work for longer period, he cannot walk and stand for longer period and he is not able to sit properly. In cross examination he has also admitted that disability suffered by Balasaheb is limb wise and his all fractures are united and therefore he cannot assess occupational disability of Balasaheb.

18. Considering the period of admission of Balasaheb as indoor patient and as the plaster is to be kept for a period of three weeks, as pain and suffering during this period, this Court

is of the opinion that it would be just and fair to award lumpsum compensation of Rs. 2,00,000/- to him.

19. So far as case of Pandharinath is concerned, considering the evidence on record, he is rightly awarded Rs. 75,000/- as lumpsum compensation. No fault can be found with the reasoning given by the Tribunal while awarding the same.

20. In Parmindaer Singh (supra), the Apex Court laid down principles in respect of permanent disability in determination of compensation on the basis of functional disability. The appellant in that case had suffered grievous injuries including head injury with traumatic subarachnoid haemorrhage, and had to undergo a hemi-craniotomy i.e. removal of front bone of the skull. He had also suffered fracture of both jaw bones and disfiguration of his face. Due to severe head injury, his left arm and leg were not functioning properly. He had undergone five surgeries. On examination by medical board, he was found to be an operated case with hemiplegia i.e. weakness of one half of the body on the left side. The doctor opined that the appellant shall not be able to work as a labourer, or do agricultural work, or work as a driver. His disability was assessed at 75% which was permanent in nature. In these facts,

Apex Court by assessing permanent disability awarded enhanced compensation.

Such are not the facts of the present case.

21. For the aforesaid reasons, following order is passed:

ORDER

- (I) First Appeal No. 192 of 2016 is partly allowed with proportionate costs.
- (II) Impugned judgment and award dated 10.09.2015 passed by Member, M.A.C.T. Udgir, in M.A.C.P. No. 111 of 2010 is modified by holding respondent No. 3/Insurance Company liable to pay the compensation.
- (III) Claimant- Balasaheb Navtakke is held entitled for enhanced compensation of Rs. 1,00,000/ along with interest @ 10% p.a. from the date of filing claim petition till its realization, to be paid by Insurance company in the Tribunal within 12 weeks from date of uploading of this judgment.
- (IV) Claimant- Balasaheb to pay additional Court fees on enhanced amount.
- (V) First Appeal No. 205 of 2016 is dismissed.

[NITIN B. SURYAWANSHI, J.]

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