

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 308 OF 2022

Ravindra Vinayak Gharpankar Aged 31 Yrs, Occ. Service R/O. Erandol Taluka Ajara, Dist : Kolhapur	Appellant (Ori. Claimant)
Versus	
1. Jivajirao Sadashivrao Ingle Aged 61 Y, Occ. Business R/o. 2019/36, 6th Lane, Rajarampuri Kolhapur 2. The United India Insurance Company Ltd. Opposite office of SDO, Gadhinglaj, Tal. Gadhinglaj, Dist. Kolhapur	Respondents

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Mr. S. A. Rajeshirke, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 30th JANUARY, 2024.

JUDGMENT :

1. By way of this appeal appellant/claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant that appellant was travelling as a pillion rider on the motorcycle. The offending car gave dash to the motorcycle due to which appellant has sustained grievous injuries and has suffered 25% permanent physical

disability and 30% permanent functional disability. Accident occurred due to sole negligence of car driver. But the Tribunal has fixed 50% contributory negligence on the claimant/appellant which is not proper. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.2 /Insurance Company that while passing order the Tribunal has considered all the aspects and on that basis Judgment and Order is passed and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Gadhinglaj (for short “**the Tribunal**”). It is claimant’s case that on 12.04.2006 at about 3:00 p.m. claimant was coming from Amboli to Ajara road on motorcycle bearing No. MH-14-DC-2707 with his brother. The appellant /claimant was a pillion rider and his brother was riding the said motorcycle. When they were proceeding on the said road, at that time one car bearing No.MH-09-BC-8824 came from opposite direction in rash and negligent manner and gave dash to their motorcycle. Due to said dash, appellant / claimant sustained injuries. To prove the negligence of car driver, the appellant /claimant has examined himself and his brother. In their evidence, it has come on record that, accident occurred due to negligence of the car driver. While dealing with the issue of negligence, the Tribunal

has observed that there was negligence of driver of both the vehicles i.e. Omni-e-car and motorcycle. Hence, the Tribunal has fixed 50% contributory negligence on driver of Omni car and 50% on appellant/claimant. I am unable to understand the observations of the Tribunal about putting 50% contributory negligence on the appellant/claimant. From the first information report of accident it shows that, the driver of offending car was proceeding from Kolhapur to Amboli and at a place of accident, the steering of his car was locked, due to which said car went on wrong side and gave dash to the motorcycle of the appellant / claimant. But this fact is not considered by the Tribunal. Moreover, the driver of offending car did not step into the witness box to prove negligence of the claimant. The appellant / claimant was a pillion rider on the motorcycle, so question of his contributory negligence would not come. But theses facts are not considered by the Tribunal, hence I am setting aside the observations of the Tribunal in respect of putting 50% contributory negligence on the appellant/claimant. The Tribunal has deducted 50% amount out of awarded amount i.e. Rs.6,33,394/-. I am awarding the said amount to the claimant/appellant.

5. In view of the above, I pass following order:

ORDER

- i. The appeal is partly allowed.

- ii. The appellant / claimant is entitled for Rs.6,33,394/- @ 9% per annum from date of filing of claim petition till realisation of the amount.
 - iii. The respondent No.2 / Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the date of receipt of this order.
 - iv. The appellant/claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
6. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)