

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 805 OF 2018

Laxman Ramchandra Aatpadkar	)	
Age- 42, Occ: Vehicle Driver/owner	)	
R/at. Kusumod, Post Piliv,	)	
Tal. Malshiras, Dist. Solapur	)....Appellant	
	Orig. Respondent	

Versus

Suhas Pandurang Mane	)	
Age: 26 years, Occ: Service	)	
R/at. Ashta, tal. Walwa,	)	
Dist. Sangli.	)....Respondent	
	Orig. Petitioner	

Mr. Vaibhav V. Ugle, Advocate for the Appellant.
Mr. Ramdas A. Shelke, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are at the time of accident the Claimant was not wearing helmet and he was not holding effective and valid driving licence.

2. It is contention of learned counsel for the Appellant/Owner of offending vehicle that at the time of accident, the Claimant was not wearing helmet had he worn the helmet, he would not have injured. Learned counsel further submitted that at the time of accident, the Claimant was not holding effective and valid driving licence but, these facts are not considered by the Tribunal and has awarded compensation on higher side. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondent/Claimant submitted that due to accidental injuries, the Claimant has suffered 40% disability. The offence was registered against the driver of offending vehicle. While deciding the claim petition, the Tribunal has considered 40% contributory negligence of the Claimant. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Islampur Dist. Sangli (for short "the Tribunal").

5. Due to accidental injuries, the Claimant has suffered 40% permanent physical disability. This disability is not challenged by the

Appellant. It is claimant's case that the Appellant had parked his tractor and two trolleys loaded with Sugar cane on the road without reflector, indicator or giving any signal. The claimant was proceeding on his motorcycle, due to dark he could not notice the trolleys and gave dash to it from back side. He was seriously injured in said accident. The offence was registered against the Appellant. While dealing with the issue of contributory negligence, the Tribunal has observed that the Appellant/driver of offending vehicle was 60% negligent and 40% negligence is considered of the claimant. I do not find infirmity in it. In my view, the offence was registered against the Appellant, he had parked tractor and trolleys on road without parking lights hence, I do not see merit in contention that accident occurred due to negligence of the claimant.

6. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed.
- ii. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the tribunal

along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)