

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 273 OF 2018

	Bharti Axa General Insurance Company Limited, Through its Manager Legal Mr. Ashwin Kumar Gawai, Millennium Star Building, Office No.: 09, Near Ruby Hall Clinic, Pune-1.	...	Appellant/ Original Respondent
	versus		
1	Narayan Dadu Temgude Age : 51 years, Occupation : Nil R/at-Flat No: 24, Sai Prasad Apt. Singhgad Road, Vadgaon BK, Pune.		Original Petitioner No.1.
2	Ajay Atmaram Ambre, Age – Adult, Occu: Business, R/at : Flat No.: 03, Sukhwani Lawns, B-Building, Morwadi, Pimpri, Pune-18.		Original Petitioner No.2 Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.

Mr. S. G. Kale along with Mr. Uday B. Nighot, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th MARCH, 2024.

Oral Judgment :

1. The issues involved in this appeal are there was no involvement of the offending car, disability of the claimant is considered on higher side, future prospects should not have been awarded and compensation awarded under the other heads are on the higher side.

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2. It is contention of learned counsel for the appellant-Insurance Company that the offending car was not involved in the said accident but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered the disability of the claimant on higher side, which is erroneous. Learned counsel further submitted that the Tribunal should not have awarded future prospects and compensation of Rs.5,00,000/-awarded for loss of comforts in life and Rs. 10,00,000/-towards pains and sufferings is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that immediately after the accident, an offence was registered against the offending car. The driver of the offending car was arrested in connection with the accident and he was charge-sheeted. The owner of the offending car was made party in the claim petition and he did not dispute the accident. Learned counsel further submitted that due to accidental injures, there is total loss of vision of both the eyes of the claimant. The claimant was driver and he was getting more than Rs.23,000/- per month as salary but due to accidental injuries, he has lost his job. The Tribunal has considered all the aspects, on that basis, the judgment and order is passed. Hence, no interference is required in it.

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

5. It is claimant's case that on 3rd October 2015 at about 7.00 p.m., the claimant was proceeding towards Kalewadi, at that time, the offending car bearing registration No. MH-14-CS-6156 came from backside of the claimant and gave dash to him and after dash, the driver of the offending car fled away from the incident spot. An offence was registered against the driver of the car.

5.1. Due to accidental injuries, the claimant has suffered 100% permanent disability. To prove the negligence of the driver of the offending car, the claimant has examined himself at Exhibit-25. He has stated that the accident occurred due to sole negligence of the driver of the offending car. Nothing elicited in cross-examination of this witness. The driver of the offending car did not step into witness box to prove the negligence of the claimant nor to prove that his car was not involved in the accident.

5.2. While dealing with the issue of negligence and involvement of the offending car, the Tribunal has observed that offence was registered against the driver of the offending car immediately after the accident. Charge-sheet was filed against the driver of the offending car. The Tribunal has further observed that there is no satisfactory explanation given by respondent No.2/opponent No.1 as to why the police filed charge-sheet against him. The Tribunal further observed that the accident

occurred due to sole negligence of the driver of the offending car. I do not find infirmity in it. Moreover, there was no defense of non-involvement of the driver of the offending car in the said accident was taken before the Tribunal.

5.3. From the evidence of the claimant, it has come on record that he was dashed by the driver of the offending car. Offence was registered against the driver of the offending car, charge-sheet was filed against him. Moreover, the driver of the offending car did not step into the witness box to prove that there was no negligence on his part and his car was not involved in the said accident. Hence, I do not see merit in the contention that the offending car was not involved in the said accident, nor the accident happened due to negligence of the claimant himself.

5.4. To prove the disability, the claimant has examined AW-2-Dr. Bhushan Wadekar at Exhibit-58. He has stated that due to accidental injuries, the claimant has lost vision of both eyes and there is permanent disability of 100%. Nothing elicited in cross-examination of this witness.

5.5. It has come on record that the claimant was driver and he was working as driver with Mahilagruh Lijjat Papad Company. To prove his income, AW3-Ratnamal Jadhav, Director of Mahilagruh Lijjat Papad Company has been examined. He has stated that the claimant was working in their company and he was getting salary of Rs.23,619/- per month. After the accident, due to disability, the claimant has resigned

from his service. Considering the evidence on record, the Tribunal has awarded compensation. I do not find infirmity in it.

5.6 Though it is contention of learned counsel for the appellant that the amount of Rs.5,00,000/- and Rs.10,00,000/- awarded under loss of comforts and pains and sufferings are on higher side, in my view, due to accidental injuries, the claimant has lost vision of his both eyes, he has to suffer for his remaining life and he has lost his job, considering the nature of injuries, the compensation awarded under these heads is proper. I do not find infirmity in it and I pass following order.

ORDER

1. The appeal is dismissed. No order as to cost.
2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
6. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)