

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 540 OF 2011

Shri Ashok Khandu Ladkar

Age 40 years, Occ : Services

R/at – A-101, Matoshree Apartment, Rabodi,
Koliwada, Thane (West)

Appellant

(Original

... Claimant)

Versus

1 Shri Ajay Maruti Patil

R/at – At & Post Shirki, Chawl No.1,

Taluka Pen, Dist. Raigad

(Owner of Truck bearing Regn. No. MTS 26287)

2 Oriental Insurance Co. Ltd.

Thane Divisional Office,

Arjun Towers, Gokhale Road, Thane – 400 602

(Insurers of the Truck bearing Regn. No. MTS 2687) ... Respondents

.....

Mr. Sagar Joshi, Advocate for the Appellant.

Smt. Poonam Mital, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 10th APRIL, 2024**ORAL JUDGMENT :**

1. This appeal is preferred by the appellant / claimant against the dismissal of the claim petition.

2. It is contention of learned counsel for the appellant /claimant that claimant was proceeding on his motorcycle by following traffic rules on Mumbai Goa road, when he was near Wadkhal at that time offending truck came from opposite direction, the driver was driving it in rash and

negligent manner while trying to overtake other vehicle the driver of offending vehicle came on wrong side and gave dash to the motorcycle of the claimants. Due to dash the claimant sustained grievous injuries. He was shifted to hospital, behind back of the claimant police has registered offence against the claimant. The claimant has been acquitted by the Trial Court from the said offence. Learned Court further submitted that due to accidental injuries the claimant has suffered 30% permanent physical disability but the Tribunal has considered these facts and has dismissed claim petition which is erroneous. Hence requested to allow the appeal.

3. It is contention of learned counsel for the Insurance Company that accident occurred due to sole negligence of the claimant as he drove his motorcycle in high and excessive speed. He gave dash on the driver side of the truck. The eye witness who saw the accident has stated before the police that accident occurred due to sole negligence of the claimant on that basis the police has registered offence against the claimant. The Tribunal has considered all the aspects while passing Judgment and Order, 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, Thane (for short "**the Tribunal**"). To prove the negligence of driver of truck, claimant Mr. Ashok has examined himself. He has stated that when he was proceeding

on motorcycle the driver of truck came from opposite side and while overtaking other vehicle he came on wrong side and gave dash to his motorcycle. Due to dash he had sustained grievous injuries. This witness is not cross examined by the learned counsel of Insurance Company. While dealing with the issue of negligence the Tribunal has observed that offence is registered against the claimant. The police papers produced on record shows that accident occurred due to sole negligence of the claimant. On that ground the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal as evidence of the claimant has gone unchallenged. The claimant has not been cross examined by the Insurance Company. Moreover, the Insurance Company has not filed written statement in its defence. Though the police papers shows that accident occurred due to negligence of the claimant, but driver of the offending truck has not been examined to prove the negligence of the claimant whereas the claimant has stepped into the witness box and had stated that accident occurred due to negligence of the driver of truck which has gone unchallenged.

4.1. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 of 2019***, the Court has to give weightage to the evidence given before the Court and not contents of the FIR or police papers.

Considering this fact, I am considering 70% negligence of the claimant and 30% of the driver of offending truck. Due to accidental injuries, the claimant has suffered 30% permanent physical disability. To prove the disability claimant has examined the doctor. The claimant was working as a technician in the Municipal Corporation, Thane, he was getting salary of Rs.9,114/- p.m.

5. Considering the above calculations, claimants are entitled for following calculations:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	9,114.00
Medical Expenses	Rs.	75,000.00
Multiple Fracture of colles Right hand (3 points) and Right little finger. Fracture of bilateral Olecranon communicated, left side fracture of lateral Condyle with lumanic dislocation of elbow, right side communicated fracture of lower end of radius	Rs.	60,000.00
Loss of Income of 4 months	Rs.	37,644.00
Permanent disability 30%	Rs.	50,000.00
Conveyance	Rs.	10,000.00
Special diet	Rs.	5,000.00
Inconvenience, hardship, uneasiness, loss of amenities (Age 35 year)	Rs.	15,000.00
Total	Rs.	2,52,644.00
30% Compensation	Rs.	75,794.00

6. As this Court has held negligence of the appellants/claimants at 70%, the appellants/ claimants are entitled for 30% compensation. Hence, I pass following order.

ORDER

- i. The appeal is allowed.
- ii. The claimant is entitled for the compensation amount of Rs.75,794/- @ 7.5% interest from the date of filing claim petition till realisation of the amount.
- iii. Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
- iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The claimant shall pay deficit Court fee on compensation amount if any as per rule.

7. The appeal is disposed of. Pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)