

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

FIRST APPEAL NO. 1029 OF 2010

The New India Assurance Co. Ltd.,)
This office situated at Poojaya Sindhi,)
Panchayat Bldg., 1st Floor,)
M. G. Road, Panvel – 410 206)
D/o. Sushila Bhavan, 1st floor,)
Dhuriwadi Vasai (west)-401202)

....Appellant
(Org. Insurer)

Versus

1. Shri. Rajendra Gajanan Sadvilkar,)
Aged about 45 years Old,)
Residing at : Sai Leela Nagar,)
Room No.15, Gala Lane,)
Acho9legaon, Nallasopara (East),)
Dist. Thane)
)..
Applicant)

2. Mr. D. B. Thakar,)
Residing at 325/18, A/P Bhendkhal,)
Post – Navghar, Taluka – Uran)
Dist. Raigad, Thane 400 707,)
Maharashtra.)
....Respondents
(Org. Applicant & Opp. No.1)

Mr. D. R. Mahadik, Advocate for the Appellant.
Mr. Vilas R. More, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are accident occurred due to sole negligence of the claimant and income of the claimant is considered on higher side.

2. It is contention of learned counsel for the Appellant that claimant was walking on the road at that time his spectacles fell down, while picking that spectacles, he was dashed by the offending vehicle. There was contributory negligence of the claimant in the said accident but, this fact is not considered by the tribunal. Learned counsel further submitted that the tribunal has considered monthly income of the claimant at Rs.10,500/- per month, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent/Claimant that due to accidental injuries both legs of the claimant have been amputated above the knee. The claimant has lost job, he was working in Bombay Municipal Corporation and his monthly salary was at Rs.10,500/- per month. The documents are

produced on record to prove the monthly income of the claimant. The accident occurred due to sole negligence of the driver of offending vehicle. The judgment and order passed by the tribunal is proper. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Vasai (for short “the Tribunal”).

5. It is claimant’s case that on 3rd January, 2006 around 14:30 hours. The claimant was walking on the road in front of the Dattatraya Shopping Centre, Vasai Road (W). At that time, the offending vehicle gave dash to him. Due to said dash he fell down and sustained fracture and various injuries to the parts of his body. Due to accidental injuries, his both leg have been amputated and he has suffered 90% physical permanent disability. To prove the negligence of driver of offending vehicle, the claimant examined himself. He has stated that when he was walking on road the driver of offending vehicle gave dash to him. Accident occurred due to negligence of the driver of offending vehicle.

6. It is contention of learned counsel for the Appellant/Insurance Company that claimant himself admitted in cross

examination that when he was crossing the road, his spectacles fell down on the road and he was busy in the process of picking it. In the meanwhile, truck dashed to him. In my view to prove the negligence of claimant, the driver of offending vehicle did not step into witness box. The admission given in the cross-examination cannot be considered as a sole proof. The F.I.R. was lodged against the driver of offending truck. Considering the evidence on record, I do not see merit in the contention of appellant that accident occurred due to negligence of the claimant.

7. To prove the income of the claimant, claimant examined himself, he has stated that the time of accident he was employee of Bombay Municipal Corporation and earning monthly salary of Rs.10,000/-. The claimant produced salary slip and salary certificate, which are at Exhibit-29.

8. While dealing with the issue of income of claimant, the tribunal has observed that the claimant was serving in Bombay Municipal Corporation and he was getting salary of Rs.10,529/- per month. The tribunal has considered monthly income of the Claimant at Rs.10,500. I do not find infirmity in it. Appeal is devoid of merit and 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.
10. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)