

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

SHANTANU  
SHANKARSA  
DHUDUM

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**FIRST APPEAL NO. 187 OF 2008**

The Post Master General )  
Through Sr. Manager, )  
Mali Motor Service, )  
134-A, Sudan Kalu Ahire Marg, )  
Worli, Mumbai-400 018 ) ....Appellant  
(Orig. Opp. Party)

**Versus**

1. Akbarali Babarali Lunje )  
Residing at M/s. Datar Steel Centre, )  
Shop No.4, Gate No.4, R.A. Road, )  
Wadala, Mumbai 400 031. )

2. The State of Maharashtra )  
Mantralaya, Nariman Point, )  
Mumbai-400 020. ) ....Respondents  
(Orig. Applicant)

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Mr. Chandrakant N. Chavan, Advocate for the Appellant.  
Mr. T. J. Mendon, Advocate for the Respondent No.1.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 30<sup>th</sup> APRIL, 2024.**

**Oral Judgment :**

1. The issues involved in this Appeal are compensation awarded on higher side and Application of wrong multiplier and accident occurred due to negligence of the taxi driver.

2. It is contention of learned counsel for the Appellant that accident occurred due to negligence of the taxi driver, who gave dash to the vehicle of the Appellant but this fact is not considered by the Tribunal. Learned counsel further submitted that the doctor has not been examined to prove the disability of the Claimant but the Tribunal has considered disability of the Claimant at 20%. The Claimant has continued with the business after the accident but, the Tribunal has awarded loss of earning capacity, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent/Claimant that the vehicle of the Appellant gave dash to the taxi in which the Claimant was travelling. The offence was registered against the driver of vehicle of Appellant. Appellant has not produced any evidence on record to prove the negligence of taxi

driver, the Tribunal has considered all the aspects while passing judgment and order and no interference is required in it. Learned counsel further submitted that the disability certificate is admitted by the learned counsel for the Appellant, on that basis, the Tribunal has considered disability of the Claimant.

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

5. It is Claimant’s case that on 8<sup>th</sup> October, 2001 at about 12:30 pm. The Claimant was travelling in taxi from Matunga to his house at Antop Hill. It is contended that Mail van bearing registration No. MH-01-H-1483 suddenly came from back side and dashed against the taxi, as a result the Applicant sustained serious injuries. He was admitted to Sion Hospital. The Applicant had sustained fracture to Acetabulum (R). The offence was registered against the driver of Postal van / Mail van. To prove the negligence of driver of Postal van, the Claimant has examined himself, he has stated that Postal van suddenly came in fast speed and dashed against the taxi in which he was travelling. In cross-examination, he admitted that at Ruia College Junction, the taxi was required to take right turn. The vehicles were

coming from the Sion side. He denied the suggestion that the taxi took right turn without taking into account the traffic from the Sion side. To prove its defense, the Appellant has examined driver of Postal van Mr. D. V. Pathak at Exhibit-15. He has stated that, when he was proceeding on road, the speed of his van was 40 to 50 kmph. One taxi was coming from the opposite direction, it suddenly turned to right side. He immediately applied the brake, front left portion of the van dashed against the taxi.

6. While dealing with the issue of negligence, the Tribunal has observed that in written statement, the Appellant has not taken defense that the taxi suddenly turned to right side. DW-1 driver has not stated that taxi was in high speed. The Tribunal further observed that the evidence of DW-1 does not indicate that the taxi driver was rash or negligent while turning to the right side. I do not find infirmity in it. In my view, DW-1 has admitted that, he dashed the taxi from its back side. Moreover, in written statement, the Appellant has not stated that the taxi took suddenly right turn hence, I do not see merit in the contention that accident occurred due to contributory negligence of the taxi driver.

7. It is Claimant's case that Claimant has suffered 40%

permanent physical disability. The disability certificate is admitted by the counsel of Appellant before the Tribunal. Hence, the Tribunal has exhibited the disability certificate. While dealing with the issue of disability, the Tribunal has considered disability of the Claimant at 20 %. It has not been challenged by the Claimant hence, I am considering the same disability of 20%. It is contention of learned counsel for the Appellant that after the accident, the Claimant has continued with the business so there is no actual loss of the income. In my view, though the Claimant is continued the business but the Tribunal has awarded compensation as per 20% of his income, which is proper. The Tribunal has applied multiplier of 18, at the time of accident Claimant was 27 years old, it should be 17. Hence, I am considering multiplier of 17. Considering multiplier of 17 loss of earning capacity comes to Rs.1,70,000/-, the Tribunal has awarded Rs.1,80,000/- and Rs.10,000 is excess amount. The Appellant is entitled for it.

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

### **ORDER**

- i. Appeal is partly allowed.
- ii. The Appellant is permitted to withdraw excess

amount of Rs.10,000/- along with proportionate interest.

iii. The Claimant is permitted to withdraw the balance amount along with proportionate interest.

iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per rule.

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

(SHIVKUMAR DIGE, J.)