



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1094 OF 2007

Appellant : Ramchandra s/o Shivnath Paswan,
Original Claimant Aged about 33 years, Occ. Nil,
 R/o Shora Khothi, Kamptee Road,
 Nagpur – 440 026.

– Versus –

Respondents : 1) Niranjansingh s/o Dilipsingh,
Original Respondents Aged about Adult, Occ. Transport Business,
 Office at I.R.C. Transport Company, G.E. Road,
 Rajanandgaon (M.P.)

2) National Insurance Company Limited,
 Through its Divisional Manger,
 Having its Office at Paul Complex, Jania Chowk,
 Wardha Road, Nagpur.

Appeal stood dismissed against
 Respondent No.1 vide
 Registrar (I)'s Order dated 16/04/24.

 Mr. S.N. Sarodiya, Advocate for the Appellant.
 Mr. C.C. Anthony, Advocate for Respondent No.2.

CORAM : **M.W. CHANDWANI, J.**
DATE : **1st OCTOBER, 2024.**

ORAL JUDGMENT :

With the consent of learned Counsels for the parties, the appeal is taken up for final hearing.

02. **Admit.**

03. Correctness of the award dated 26/07/2006 passed by the Motor Accident Claims Tribunal, Nagpur (*hereinafter referred to as "Tribunal" for*

short) in Claim Petition No.18/2003 is questioned in this appeal, whereby the Tribunal directed the respondents to jointly and severally pay compensation of Rs.5,67,900/- with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization to the appellant who sustained permanent disability due to amputation of his right leg in a vehicular accident that occurred on 23/09/2000.

04. The facts which are necessary to decide the appeal can be summarized as under :

- (I) The appellant, who was a driver by profession, was employed with M/s. Kings Way Carriers Pvt. Ltd., Nagpur for driving an explosive van. While he was proceeding from Chandrapur to Nagpur, a Truck bearing registration No.MOJ-162 (*hereinafter referred to as "offending vehicle" for short*) was coming from the opposite direction and a head-on collision occurred between the explosive van and the offending vehicle. Resultantly, the cabin on the right side of the explosive van was badly damaged and the appellant suffered multiple fractures to his right leg. During treatment, his right leg was amputated below the knee.
- (II) The appellant filed a claim petition alleging that the driver of the offending vehicle was driving the vehicle in a rash and negligent

manner and claimed compensation of Rs.10,50,000/-. At that time, the offending vehicle was insured with respondent No.2. The Tribunal after hearing the claim petition on merits, assessed total loss to the tune of Rs.11,35,800/- and simultaneously recorded the finding that the appellant was also liable for contributory negligence to the extent of 50% and directed respondent No.1 (owner of the offending vehicle) and respondent No.2 (Insurance Company) to pay compensation of Rs.5,67,900/- jointly and severally to the appellant. Feeling aggrieved with the finding of contributory negligence, the appellant filed the present appeal.

05. It is contended on behalf of the learned Counsel for the appellant that since, one side of the road was under construction and all the vehicles were allowed to be driven from the right side of the divider of the said road while proceeding from Chandrapur to Nagpur, the Tribunal did not consider this aspect and erroneously held that the appellant was driving the vehicle on the right side. According to him, the Executive Engineer of Public Works Department (P.W.D.) has been examined by the appellant to prove the factum of construction of road from the left side while proceeding from Chandrapur to Nagpur. It is also contended that the explosive van which was being driven

by the appellant does not come under the definition of heavy motor vehicle, whereas, the offending vehicle was a heavy motor vehicle. This aspect has been ignored by the Tribunal and negligence has been equally distributed between the appellant and the driver of the offending vehicle, which is incorrect.

06. The learned Counsel appearing on behalf of respondent No.2-Insurance Company submitted that an offence has been registered against the appellant for driving his vehicle in a rash and negligent manner and therefore, the Tribunal has rightly considered that the appellant is also liable for contributory negligence to the extent of 50%. According to him, the compensation awarded by the Tribunal is just and proper. He, therefore, seeks dismissal of the appeal.

07. Perusal of the police investigation papers goes to show that the appellant was driving the vehicle on the right side of the divider while he was proceeding from Nagpur to Chandrapur and whereas, the offending vehicle, which was coming from Nagpur, was on his left side. At this stage, it is to be mentioned here that the appellant has examined Mr. Deepak Sontakke, Executive Engineer, P.W.D., Nagpur, who deposed that during that relevant time, left of the side road was under construction and the traffic coming from Chandrapur was diverted towards the right side of the divider of the said

road. So far as driving of the vehicle by the appellant towards right side of the divider while proceeding from Chandrapur to Nagpur is concerned, it cannot be said that the appellant was driving his vehicle from the wrong side, as he has proved the factum of construction of the left side of the road by examining the Executive Engineer of P.W.D.

08. Incidentally, there was a head-on collision between these two vehicles and this fact cannot be ignored. Considering the impact of the accident, it can be gathered that the appellant could have slowed the speed of his van down, particularly, when one side of the road was closed and traffic from both the ends was allowed to be passed from the other side of the road. Therefore, the findings of the Tribunal with regard to contributory negligence on the part of the appellant cannot be disagreed with. However, considering the fact that the offending vehicle is a truck, whereas, the appellant was driving a van which is not a heavy motor vehicle; “heavier the vehicle, heavier lies the responsibility” is the principle, which will be applicable in the present case. Therefore, in my view, considering the nature of the vehicles, driving of the appellant as well as of the driver of the offending vehicle, contributory negligence on the part of the appellant can be reduced to the extent of 25%, whereas, the driver of the offending vehicle can be made responsible for his contribution in negligence to the extent of 75%. The Tribunal did not

consider this facet of the case and erroneously held the appellant liable for contributory negligence to the extent of 50%. To that extent, the appeal succeeds. Therefore, the impugned order needs to be modified as under :

ORDER

- I. The appeal is partly allowed.
- II. The respondents shall pay 75% of the compensation amount determined by the Tribunal to the appellant, jointly and severally, with future interest at the rate of 7.5% per annum from the date of the claim petition till realization of the amount except the period from 10/07/2009 till 08/01/2014 on the enhanced compensation.
- III. The respondents to deposit the enhanced amount of compensation before the Tribunal within six weeks from today.
- IV. There shall be no order as to costs.

(M.W. CHANDWANI, J.)