



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 FIRST APPEAL NO. 808 OF 2011

GANESH SHIVAJI PATIL
VERSUS
THE NEW INDIA ASSURANCE CO. LTD. AND ORS

Mr. M. M. Bhokarikar, Advocate for Appellant
Mr. A. S. Usmanpurkar, Advocate for the Respondents

CORAM : R. M. JOSHI, J.

DATE : 4th OCTOBER, 2025

P.C. :-

1. This Appeal under Section 170 of the Motor Vehicles Act takes exception to the judgment and award dated 29/12/2010 passed by the Motor Accident Claim Tribunal, Jalgaon in MACP No. 79/2005, for seeking enhancement of the compensation granted by the Tribunal.

2. Appellant/Claimant was riding motor cycle bearing No. MH-19-H-0672 while returning from Shendurni to Pimpalgaon Budruk on 02/12/2004 at about 12.30 p.m. It is his case that when he reached near the field of Shri Bhaurao Patil, Sangavi on Pahur Shendurni Road, a matador bearing No. MH-19-4198 coming from the Pahur side gave dash to another matador bearing No. MH-02/T-5995 which was running ahead of him. It is claimed that the matador bearing No. MH-19/4198 came in high speed and gave dash to the other matador plying in front of motorcycle of the claimant and the said matador consequently

dashed upon his motorcycle. In the said accident, he sustained injuries. He was admitted to the Civil Hospital and from there shifted to Neurology and Trauma Center of Dr. Rajesh Jain, Jalgaon. He claims to have sustained fracture to the skull and so also to the shoulder. He claims to have been kept in I.C.U. and that to operation were performed upon him. It is claimed by him that at the time of occurrence of the accident he was about 30 years of age with occupation as an agriculturist and earning approximate income of Rs.6,000/- per month. He claims to have suffered permanent disability and was unable to work as before. It is claimed that both matador vehicles involved in the accident are insured with New India Assurance Company. The complainant on all accounts claimed compensation of Rupees Four lakhs jointly and severally from the Respondents.

3. Respondent No.2 though served failed to remain present before the Tribunal and hence, the proceedings were held ex-parte against him. Respondent Nos.1 and 3 i.e. Insurer filed say at Exhibit 19 denying the adverse contentions of the claimant. It is claimed that the accident has occurred due to the negligence of the driver of the motorcycle i.e. claimant himself.

4. Learned Tribunal framed issues vide Exhibit 45 and burden was cast upon the claimant to substantiate that he sustained injuries due to rash and negligence driving of the vehicles of Respondents so

also he is entitled to receive compensation.

5. Claimant examined himself at Exhibit 48 and placed reliance on documentary evidence such as FIR (Exhibit 53), spot panchnama (Exhibit 54), Doctor's certificate (Exhibit 55), insurance policy of matador No. MH-02/T-5995 (Exhibit 56) and medical bills (Exhibit 59). He also placed on record disability certificate which is marked as Exhibit 57 with objection.

6. During the evidence it is claimed by the claimant that he was riding motorcycle in moderate speed and that the accident has occurred due to the rash and negligence driving of matador bearing No. MH-19-4198. He placed reliance on the spot panchnama, first information report and other police papers.

7. For the purpose of proving the permanent disability caused to the claimant he placed reliance on the disability certificate Exhibit 57. It is necessary to take note of the fact that though the said certificate was marked as Exhibit 57, it was marked with objection. There is no dispute about the fact that claimant apart from examining himself has not examined any other witness and has not examined author of the said certificate.

8. No other evidence was led by the parties and the Tribunal by passing impugned judgment and order partly allowed the claim directing

compensation of Rs.1,10,000/- to be paid to the claimant jointly and severally by Respondent Nos.1 and 2 along with the interest at the rate of 7.5% per annum.

9. Being aggrieved by the said judgment and order, present Appeal is filed on the ground that the Tribunal has committed error and not considering the provisions of the Motor Vehicles Act and the precedents of the Apex Court while passing impugned order. It is also sought to be claimed that the Tribunal has failed to take into consideration the nature of injuries, the effect of those injuries on the capacity of claimant to work and on that count future income being affected adversely. It is also claimed that the Tribunal has failed to take into account the age of claimant and the loss of efficiency caused to the claimant on account of the injuries sustained in the accident.

10. Learned Counsel for the claimant submits that the Tribunal has committed serious error in not considering the future loss of income caused to the claimant on account of the injuries and consequent permanent disability. It is his submission that the Tribunal has failed to take into consideration the physical limitation and disabilities caused to the claimant on account of the injuries sustained. It is his submission that the Tribunal ought to have accepted the disability certificate placed on record and ought to have granted compensation on various heads. To support his submission he placed reliance on the judgment of the

Hon'ble Supreme Court in case of ***Jithendran V. New India Assurance Co.Ltd. AIR 2021 SC 5382***. A specific reference is made to paragraph No.16 of the said judgment referring to the heads under which the claimant should be awarded compensation in injury cases. Similarly, he has placed reliance on the judgment in case of ***Jagdish V. Mohan and Ors, AIR 2018 SC 1347*** in order to argue that pain and suffering, loss of income, inability to lead normal life with amenities, medical expenses and loss of expectation of life ought to have been considered by the Tribunal which has not been taken into account. He also placed reliance on the judgment of the Co-ordinate Bench of this Court in ***First Appeal No. 1670/2017, dated 09/10/2018*** to argue that on the heads such as future income, loss of actual income, medical expenses, loss of amenities, loss of expectation of life etc. the compensation ought to have been granted. Reference is also made to the judgment of this Court in case of ***New India Assurance Company Limited, Through its Authorized Signatory/Branch Manager, Branch Ofce At Jalna Road, Beed Tq. and Dist. Beed and Anr. Versus Vishal Rameshwar Mote and Anr, 2019(6) BCR 487***. It is his submission by referring to the judgment of the Hon'ble Supreme Court in case of ***Sunita V. Rajasthan State Road Transport Corporation, AIR 2019 SC 994*** that the strict principles of proof like criminal case are not attracted to the proceeding under the Motor Vehicles Act and the proof in such cases must be on preponderance of probability only. He also placed reliance on following

judgments:

- (i) Pappu Deo Yadav Vs. Naresh Kumar, AIR 2020 SC 4424
- (ii) Jagdish V. Mohan and Ors., AIR 2018 SC 1347
- (iii) Raj Kumar V. Ajay Kumar, AirOnline 2010 SC 125
- (iv) Smt. Pushpa Bajirao Thorat and Ors. Vs. Dnyaneshwar Kondaji Auti Died and Ors., 2019(2) Mh.L.J. 418
- (v) Oriental Insurance Co.Ltd., V. Smt. Nanjamma, 2003 Air Kant, H.C.R. 3098

11. Learned Counsel for the Insurer opposed the Appeal by contending that in order to decide the entitlement, at the outset claimant is required to prove that permanent disability has been caused to him. By referring to the record before the Tribunal it is argued that the permanent disability certificate has not been proved by the appellant and hence, there is no question of granting any compensation to the claimant on that count. It is his submission that the Tribunal has rightly taken into consideration the age and nature of injuries and granted compensation of Rs.30,000/- towards pains and suffering which is just and reasonable in the facts of the case. He further drew attention of the Court to the additional compensation of Rs.80,000/- granted by the Tribunal towards medical expenses without examining any other witness by the claimant.

12. There cannot be dispute made with regard to the proposition sought to be canvassed by the learned Counsel for the claimant that the principles of strict proof of a fact as in criminal case would not attract to the proceedings under the Motor Vehicles Act and the proof of the fact is

required on preponderance of probability. This, however, does mean to absolve burden on the claimant to substantiate his claim including factum of permanent disability by leading cogent evidence. Herein this case, the initial burden was on claimant to prove the occurrence of the accident and the rash and negligence on the part of the respondents in the same. The claimant has led evidence to that effect. Apart from his oral evidence, he placed reliance on the first information report and other police papers which indicate that the accident in question has occurred not due to the negligence of the claimant but it is negligence of the driver of matador in question.

13. Thereafter the claimant was required to establish that in the said accident on account of the injuries caused therein, he has suffered permanent disabilities. In this regard though claimant has examined himself and also has sought to place on record disability certificate. Admittedly, no witness is examined by claimant to prove the certificate of disability and as such it cannot be read in evidence since it has not been proved. This Court, finds no substance in the contention of the learned Counsel for the Appellant/claimant that even without proving the certificate, the contents thereof could be read in evidence. Though claimant is not required to prove the said fact by strict proof but on probability it ought to have been established.

14. Thus, admittedly the claimant has failed to substantiate that

permanent disability was caused to him. As against this, evidence on record i.e. discharge card indicates that he was hospitalized for three days i.e. 02/12/2004 to 05/12/2004 and did not undergo any surgery. This evidence clearly indicates that the contentions of the claimant with regard to the having undergone operation etc., can not be accepted.

15. Pertinently, though the claimant has not examined any witness, the Tribunal has accepted the medical bill to the extent of Rs.80,000/-. In the facts of the case and having regard to the period of hospitalization, this Court finds the said assessment to be just and reasonable.

16. Since the claimant has failed to substantiate his claim of permanent disability, question of Tribunal requiring to decide any other issue does not arise. There is no evidence placed on record to indicate that there was loss of income to the claimant. Moreover, for want of proof of permanent disability, it cannot be said that his future earning capacity was hampered. Having regard to the case sought to be made out by the claimant and the evidence led before the Tribunal, the compensation granted by the Tribunal needs to be accepted as just and reasonable. Hence, there is no case made out by the appellant to cause interference in the order impugned. Hence, Appeal stands dismissed.

(R. M. JOSHI, J.)

ssp