IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4364 OF 2023

Branch Manager,
The New India Assurance Co. Ltd.,
3rd Party Claims Hub, 3rd Floor,
Rushiraj Regency, Near Vidya Vikas Circle,
Gangapur Road, Nashik
Through its In-charge (Legal Hub),
The New India Assurance Co.Ltd.,
D.O. No.1, Adalat Road, Aurangabad,
Dist. Aurangabad … **APPELLANT**
(Ori. Respondent No.3)

VERSUS

1. Rahul Janardhan Kadam
Age : 33 Years, Occ. Medical Practitioner &
Agriculturist, R/o Bhende,
Tq. Newasa, Dist. Ahmednagar
At present resident of Belapur,
Tq. Shrirampur, Dist., Ahmednagar

2. Bapusaheb Kachru Todmal,
Age : 45 years, Occu : Agriculturist,
R/o. Newasa (Bk), Tq. Newasa,
Dist. Ahmednagar

3. Arun Sambhaji Gonjari,
Age : 50 years, Occu. : Business,
R/o. Yadav Vasti, Bahirwadi,
Tq. Newasa, Dist. Ahmednagar. … **RESPONDENTS**
(R-1 Org. Claimant)
(R-2 & 3 Ori. R-1 & 2)

Mr. S. R. Bobade, Advocate for the Appellant
Mr. M. A. Jahagirdar, Advocate for the Respondents

CORAM : R. M. JOSHI, J.

DATE : 8th AUGUST, 2025

JUDGMENT :-

1. This Appeal is filed under Section 173 of the Motor Vehicles Act (for short 'MV Act'), 1988, takes exception to the order and award dated 21/09/2022 passed in M.A.C.P. No. 156/2017 by Motor Accident Claims Tribunal, Shrirampur.

2. By consent of both sides, heard finally.

3. Parties are referred to as 'claimant', 'insurer' and 'owner/driver' of offending vehicle.

4. The insurer filed this Appeal being aggrieved by the grant of compensation to the claimant of Rs.18,39,523/- with interest at the rate of 6% p.a. from the date of filing of the Petition i.e. from 13/07/2017 till realization of the amount.

5. The facts which led the filing of this Appeal can be narrated in brief as under:-

(i) Claimant, MD (Ayurdvedic), a medical practitioner and agriculturist, was riding his motorcycle bearing No. MH 17 BT 3180 and proceeding from Newasa Fata to village Bhende. He claimed that he was driving his motorcycle in slow and moderate speed from left side of the road by observing traffic rules. According to him when he reached on Newasa Shevgaon highway, white colour Maruti Swift Car bearing registration No. Mh 12 JU 2792 gave dash to him from behind. It is alleged that the driver of the said car was driving his vehicle and excessive speed and in negligent manner. In the said accident, claimant sustained injuries to his head and left hand. It is further claimed by him that the driver of the offending car did not stop at the stop of accident and fled away. He was admitted to Nobel Hospital, Ahmednagar and thereafter was shifted to Rubi Hall Clinic at Pune, wherein he was indoor patient from 08/03/2017 to 17/04/2017. MLC was referred to Koregaon Park Police Station, Pune by the Medical Officer, Rubi Hall Clinic. Since the claimant was not in a position to give statement, his statement came to be recorded on 22/03/2017. A crime came to be registered bearing No. 280/2017. Police Head Constable Ravindra Pawar conducted the investigation. He visited the spot and prepared spot panchnama. Motorcycle as well as offending car were seized under panchnama. Since it was revealed during the investigation that the accident in question has occurred on account of rash and negligent driving of the driver of the car, charge-sheet came to be filed against him before JMFC, Newasa. The offending car is duly insured with the Appellant-insurer.

(ii) After framing of the issues, parties led evidence. The Tribunal by impugned order and award granted compensation with interest to the claimant since the insurer is aggrieved by the same has preferred present Appeal.

6. Learned Counsel for the insurer submits that the first information report has been lodged after about 85 days from the alleged occurrence of the accident and he claims that the reregistration of FIR itself is doubtful. It is argued that no statement of eye witness has been recorded and that the Investigating Officer had not brought the case diary along with him at the time of his deposition before the Tribunal. It is his submission that it ought to have been held by the Tribunal that the first information report is false and hence, the claimant is not entitled for any compensation. Without prejudice to this submission it is sought to be argued that since claimant was not wearing helmet, responsible for the occurrence of the accident and that contributory negligent of the claimant be held. He further argued that there is no valid and effective driving license of the driver placed on record before the Tribunal and as such there is a breach of condition of the policy and therefore, the insurer is not liable to pay any compensation.

7. On merit of the claim it is contended that the claimant has obtained the medical certificate from non treating doctor. It is his submission that if the claimant has taken treatment from Ruby Hospital, he ought to have obtained permanent disability certificate from the same hospital. It is argued that the hospital refused to grant such certificate as

no permanent disability was caused to the claimant. It is further argued that the Tribunal has committed error in accepting the disability of the claimant at 30% when there is no evidence to hold so. On the point of medical bills, it is submitted that for want of examination of the person who has issued the bills, the bills ought not to have accepted by the Tribunal. All these amongst other submissions, the impugned order is ought to be set aside.

8. Learned Counsel for the claimant supported the impugned order. It is his submission that the claimant had sustained serious injury and therefore, was not in a position to record his statement immediately. His statement came to be recorded only on 22/03/2017 and hence it cannot be said that the delay caused in lodging of the FIR is fatal to the case of the claimant. It is his submission that in any case during the cross-examination of the Investigating Officer, no suggestions are made in this regard and as such there is no substance in the contention of the insurer in this regard. He further submits that the claimant has examined the Medical Officer of Government Hospital, Ahmednagar who has assessed the disability of the claimant and accordingly, certificate is issued. It is his submission that in fact the Tribunal ought to have accepted the 50% disability as assess by the Medical Officer and he claims enhancement of the compensation on this count. He further

argued that once there is no dispute made with regard to the fact that as the claimant was indoor patient from 08/03/2017 to 17/04/2017 and had undergone surgery, the medical bills produced on record are just and responsible and it was open for the Tribunal to accept the same. It is submitted that the claimant being Medical Practitioner and agriculturist certainly would have earned more income than a labourer. It is his submission that the notional income of the claimant at the rate Rs.15,000/- per month accepted by the Tribunal is reasonable.

9. Initial burden was on the claimant to substantiate his case of the occurrence of the accident, involvement of the offending vehicle, sustainment of injuries and permanent disability and loss of income. The claimant examined himself at Exhibit 25. He narrated the manner in which the accident has occurred while he was driving on 07/03/2017 at about 9.00 a.m. at Nagapur Shivar. He has also placed on record police papers, his driving license, insurance note and medical bills. These documents were marked as Exhibit 32 to 156. It is necessary to take note of the fact that when the documents were exhibited, Respondents including insurer have not objected to the same. In fact no cross-examination was conducted of the claimant on behalf of the owner and driver of the offending vehicle.

10. On behalf of the insurer, claimant was cross-examined, wherein it is brought on record that the claimant has agricultural land. There is no dispute made with regard to the fact that the accident occurred on 07/03/2017 involving the offending vehicle. In fact what is suggested to the witness is that in the said accident there was no negligence of the driver of the car. This suggestion indicates that the insurer does not dispute the involvement of the offending car in the accident, however, only denied negligence of the driver. Pertinently there is no suggestion made to this witness that false a information report being lodged in respect of the said accident. Apart from this it was suggested that he was not wearing helmet and the said suggestion is denied by the claimant. A suggestion that the accident occurred on account of motorcycle being sleep is also denied. There is no dispute made by the insurer with regard to the fact that the claimant has sustained injury in the said accident and was admitted in Ruby Hall Clinic, Pune from 08/03/2017 to 17/04/2017 and thereafter from 07/06/2017 to 20/06/2017. There is also no suggestion made to this witness that he has obtained any false medical certificate indicating the permanent disability.

11. The claimant has also examined Police Head Constable Mr. Pawar who conducted investigation into the crime. He has deposed the

manner in which the investigation was done and the investigation papers are duly identified by him. In the cross-examination of this witness it is not brought on record that no such accident has occurred. It is not suggested to the Investigating Officer that false first information report came to be lodged or that he conducted incorrect investigation of the crime. Investigating Officer has denied the suggestion that the accident has occurred on account of the fall of the claimant from the motorcycle.

12. In order to prove the permanent disability caused to the claimant, he examined Dr. Sandip Kokare, Medical Officer, District Hospital, Ahmednagar. On 09/01/2020, claimant was examined by him and the certificate was issued in Form-B. He has narrated the nature of disability caused to the claimant and has assessed the said disability at the rate of 50%. In the cross-examination nothing has brought on record in order to discredit the testimony of this witness. There is no question asked in the cross-examination to suggest that the witness is not expert in assessing the permanent disability. It is suggested in the cross-examination that the disability assessed by him is excessive. This suggestion in fact shows that the disability caused to the claimant is not in dispute.

13. As far as delay in lodging of First Information Report is concerned, the entire evidence on record indicates that the claimant had

sustained serious injuries and was required long hospitalization. Moreover in absence of any case being made out before the Tribunal even by asking questions in cross-examination of witnesses of claimants, it can not be held that the report of accident is false and not genuine. This conclusion is inevitable in the facts of the case. It must be held that owing to health condition, it was not possible for the claimant to give statement to the Police immediately. Thus, the delay caused in filing of the first information report is duly explained.

14. Though it is sought to be argued on behalf of the insurer that the claimant was not wearing helmet and therefore, needs to be held responsible for contributory negligent. There is, however, no evidence on record to indicate so.

15. It is further argued on behalf of the learned Counsel for the insurer that the Tribunal has committed error and accepting the disability to the extent of 30%. In this context, the argument is that the the assessment of the disability has not been done by the treating doctor, such assessment cannot be accepted. The assessment of the disability needs to be undertaken by the Doctor competent it is not the law that the disability must be assessed by the treating doctor. The assessment of disability is to be done by an expert in field and that herein this case the Medical Officer of the Civil Hospital, Ahmednagar has examined by the

claimant. Insurer or other Respondents have not raised any challenge to the expertise of the said witness in assessment of disability. Once his competency is not challenged, the only question arises as to whether his quantum of disability assessed is correct in the facts of the case and owing to the nature of the injuries caused to the claimant. The Tribunal has accepted the disability at 30%, and having regard to the injuries caused and the effect of the injuries on the claimant which are permanent in nature, the said assessment is found reasonable.

16. Tribunal has accepted the income of the claimant at Rs.15,000/- per month. Though there was no documentary evidence on record to indicate that the income of the claimant, however, having considered the qualification of the claimant coupled with the fact that he was performing agricultural work, the assessment of income at the rate of Rs.15,000/- per month is reasonable and deserves to be accepted. There is no dispute made with regard to the calculations of compensation for loss of income made by the Tribunal.

17. Finally it is sought to be argued that there is breach of terms and conditions of the insurance policy and as such the insurer is not liable to pay any compensation. Admittedly, the offending vehicle is duly insured with the insurer. Insurer led no evidence in order to prove any breach of terms and conditions of the policy. As such, there is no

substance in the said contention sought to be made on behalf of the insurer. Further from the evidence on record, no enhancement of compensation can be granted to the claimant, as argued on his behalf.

18. Having regard to the overall facts of case and the evidence on record, the findings recorded by the Tribunal are just and proper and for want of any perversity therein, no interference is caused in this Appeal. Hence, Appeal stands dismissed.

(R. M. JOSHI, J.)

ssp