IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2354 OF 2022

Sandip S/o. Nanasaheb Shinde,
Age : 39 years, Occu. : Agril.,
R/o. Ganesh Nagar, Opp. Malpani Lodge,
Sakar Plaza, Sangamner,
Tq. Sangamner, Dist. Ahmednagar ... **Appellant**
(Orig. Claimants)

Versus

1. Arjun S/o. Damodhar Padekar,
Age : Major, Occu. : Agril. & Service,
R/o. Dhamangaon Road,
Dhumalwadi, Akole, Tq. Akole,
Dist. Ahmednagar.

2. United India Insurance Co. Ltd.,
Hotel Karam Building,
Pune Nashik Highway,
Opp. S. T. Bus Stand, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. ... **Respondents.**
(Orig. Opponents)

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Mr. K. N. Shermale, Advocate for Appellant.
Mr. Vinodkumar R. Mundada, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 22 JULY 2025
PRONOUNCED ON : 30 JULY 2025

JUDGMENT :

1. Original claimant, who preferred M.A.C.P. No.5 of 2014 seeking compensation for injury suffered by him by accident dated 04.09.2013, dissatisfied by the quantum of compensation as well as failure to correctly ascertain the disability and non consideration of medical bills.

2. Brief facts giving rise to the accident claim petition are that, on 04.02.2013, at around 11:00 a.m., appellant, who was a pedestrian, walking over Sangamner to Akole Bypass road, who was hit from backside by a Jeep bearing registration No. MH-17-AE-2072 causing him injuries to leg, back, head, left side rib and back side bone requiring him hospitalization from 04.09.2013 to 19.09.2013 where he was required to spend around Rs.1,10,000/- and he also suffered permanent disability. It is his case that, he was an agriculturist and earning around Rs.5,00,000/- to Rs.6,00,000/- per annum from the agriculture as well as milk business. Accidental injuries and disability rendered him loss of earning and functional capacity and thereby he set up claim of Rs.5,00,000/-.

3. After notice as there was no response from respondent no.1, Tribunal has proceeded *ex-parte* against him.

4. Respondent No.2 Insurance Company resisted the claim by filing written statement Exh.22 taking up a stand of false implication denying involvement of jeep, denying negligence and taking a stand of breach of policy on account of non availability of effective driving licence.

5. After appreciating the evidence adduced by the claimant, learned tribunal was pleased to partly allow the claim by judgment and order dated 02.11.2018 awarding compensation to the tune of Rs.95,000/- including the amount of N.F.L. Rs.25,000/- with interest @ 8% per annum. Getting dissatisfied by the same, original claimant has preferred instant appeal on various grounds mentioned in the appeal memo.

6. Learned counsel for original claimant would submit that, there is improper appreciation of oral and documentary evidence adduced by the claimant in trial court. He submitted that claimant had proved injuries by examining medical expert and permanent disability to the extent of 40% was also proved by placing certificate on record. That, even medical bills were placed on record. The same are not considered and appreciated correctly by the learned trial court. He also raised the point that amounts granted under various heads are meager, and therefore, he expects an enhancement.

7. Learned counsel for respondent no.2 supported the judgment and opposed the appeal on the ground that, there was firstly no evidence to show direct involvement of jeep in question which was insured by Insurance Company. Secondly, disability certificate and medical bills are manufactured documents. Therefore,

learned tribunal committed no error in not accepting the same. Lastly, he justifies the compensation granted by tribunal and urges to dismiss the appeal for want of merits.

8. Heard. Re-appreciated the evidence as regards to accident dated 04.09.2013, on the strength of documents like FIR and spot Exhs.35 and 36, occurrence of accident stands demonstrated. Learned counsel for respondent no.2 Insurance Company would submit that, there is delay in FIR and there is no involvement of vehicle. However, considering the above fact and the investigation papers which are placed before tribunal, this court does not find any reason to doubt the involvement of offending jeep insured by respondent no.2.

9. Close scrutiny of spot coupled with the hand sketch map show that dash was given from backside to a pedestrian and therefore, even question of negligence and rash driving need not be doubted. Therefore, there is material before the trial Judge to hold that on 04.09.2013, claimant, who was pedestrian, was given dash from the backside of the jeep. As regards to injury is concerned, it is the claim of appellant - claimant that he had suffered injuries to his right leg, back, head, left rib and back side bone. He has examined PW2 Dr. Dange, who claims to have not only treated, but has also

assessed and issued permanent disability certificate. This medical expert has testified about fracture to hip and fracture to four ribs.

However, in cross examination he has admitted that, no surgery was required to be undertaken for the said fracture and minor surgery to remove air and blood from the lungs was required to be undertaken.

10. Dr. Dange seems to have admitted that, he did not perform any surgery in respect of fracture allegedly suffered by him. However, in cross examination, he has answered that fracture to the ribs automatically reunited, but not in every case. Therefore, material placed on record as regards to disability is concerned, there is no need to doubt doctor's evidence. Therefore, this court is also convinced about sufficient evidence is available regarding accidental injuries resulting into fracture to hip as well to the ribs.

11. Learned counsel for appellant has pointed out that above aspects are not correctly appreciated by learned tribunal and learned tribunal has held that there was no permanent disability. In view of such objection, the impugned judgment is visited. It is noticed that while answering issue no.2, there is discussion about alleged disability and analysis of evidence of medical expert.

12. In paragraph 26, learned tribunal has held that there is no surgery required to be undergone for the fracture. However, medical expert has specifically though stated that fracture to the ribs reunite automatically, it does not happen so in every case. In paragraph 27, learned tribunal has held that, in the net result the petitioner/appellant has not sustained the injuries which can be resulted into permanent disability, which would effect his earning capacity and has further drawn inference that opinion given by medical expert is on higher side and disability specially issued to help the claimant. But again in paragraph 30, learned tribunal has held that, *"the fact remains that the petitioner had sustained fracture injuries to ribs and hip. Therefore, naturally he will find difficulty in making movements like normal person."* Therefore, observations raised in paragraph 24 and 27 are contrary.

13. Learned counsel pointed out that, there is non consideration of medical bills and papers by the tribunal. On this issue, there seems to be discussion in paragraph 34 and 35 by answering issue no.4, wherein Insurance Company has seriously questioned the bills stating that the same are manipulated. Here, it is noticed that not only PW2 Dr. Dange, but another doctor whose name appears on medical bills namely Dr. Mhaske has appeared. However, he is not examined. When bills are sought to be relied, it was

expected of claimant to examine Dr. Mhaske, however, said doctor has not been examined. Therefore, as held by tribunal, there are reasons to doubt the credibility of the medical papers.

14. Under such circumstances, considering the nature of injuries, in the considered opinion of this court and the claim petition benevolent legislation, lump-sum amount for medical expenses to the tune of Rs.1,00,000/- is required to be granted, more particularly taking into account the duration of hospitalization, nature and parts, which are impacted due to the mishap.

15. Though there is nothing to show that because of the said disability, claimant is incapacitated permanently from rendering any work, he is entitled for the distinct compensation under the head of pain and suffering. Tribunal has granted only Rs.10,000/- and the same is requires to be enhanced to Rs.25,000/-, more particularly in view of the nature of injuries.

14. Therefore, in addition to the quantum awarded by the Tribunal, an amount of **Rs. 50,000/-** needs to be added to the compensation for medical expenses so also **Rs.15,000/-** needs to be added under the head of 'pain and suffering'. Hence, I proceed to pass the following order:-

ORDER

(i) The First Appeal is partly allowed with proportionate costs.

(ii) Impugned judgment and award dated 02.11.2018, passed by the Member of M.A.C.T., Sangamner in M.A.C.P. No.05 of 2014 is modified.

(iii) Respondent no.2 - Insurance Company to pay enhanced compensation of **Rs.65,000/-** to claimant within 12 weeks from today along with interest @ 8% per annum from the date of registration of claim petition till its realization.

(iv) Modified award be prepared accordingly.

(v) Rest of the award is maintained.

(vi) Claimant to pay court fees on enhanced compensation as per rules.

(vii) On deposit of the amount by Insurance Company, appellant/claimant is permitted to withdraw the same.

(ABHAY S. WAGHWASE, J.)

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