



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

39 FIRST APPEAL NO. 481 OF 2013

GANGADHAR VIRPRAKASHAPPA SWAMI(MATHWALE)

VERSUS

MAZURODDIN MOINUDDIN AND ANR

Mr. B.N. Gadegaonkar, Advocate for the appellant.

Ms. A.N. Ansari, Advocate for respondent No.1.

Mr. Mohit R. Deshmukh, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 22.09.2025

PC :-

01. Heard learned Advocates for the parties. Notices are already served. Parties have appeared. By consent of the parties, this matter is taken up for final disposal. This Court has gone through the record and proceedings.

02. This appeal is filed by original complainant, who had filed Motor Accident Claim Petition for injury claim. Compensation claimed was Rs. 3 lakhs. It is case of the appellant that he suffered 30% permanent disability in the accident. He was riding on his motorcycle. Vehicle of respondent No.1 coming from opposite direction gave him dash. The accident occurred on 03.12.2009 at 08.00 p.m. He was proceeding towards Degloor. Due to said accident, he received fracture

injury to his tibia fibula right with fracture femur right. He also received injury to his chest. There are also injuries to his head, on the back and all other parts of the body. He was taken to the Rural Hospital, Degloor. There, he was given primary treatment. Thereafter, he was referred to the to the Government Hospital, Nanded i.e. SGGSM Hospital. However, instead of Governemnt Hospital, he went to private hospital, namely, Durga hospital. He was there from 03.12.2009 to 19.12.2009. In the claim petition, he produced a certificate on record issued by the Medical Officer Incharge from SGGSM Hospital, Nanded i.e. Government Hospital. It is certified by the Medical Officer that the appellant has received 30% permanent disability.

03. The learned Tribunal in the claim considered the evidence. The learned Tribunal did not accept the certificate issued by the Medical Officer on two grounds that the same is not issued by the Medical Board and secondly it is not by the Doctor, who treated the claimant. It is also a fact even the Doctor who issued the certificate is also not examined. It is seen from the record that in-fact, summons was issued to the Medical Officer, who issued the certificate to the claimant. However, bhatta (witness charges) was not deposited, therefore summons could not be issued and ultimately the Doctor is not examined. The learned Tribunal

determined entitlement of Rs. 77000/- and has also allowed medical expenses to the extent of Rs. 40000/-. So far as disability is concerned, the learned Member deducted 30% of the amount by considering that it was a case of contributory negligence and liability of the claimant would be to the extent of 30%. Thus, the amount of compensation granted is only Rs. 54000/- including medical expenses of Rs. 40000/-.

04. Learned Advocate for the appellant vehemently argued that the Medical Certificate is issued by the Medical Officer Incharge SGGSM Hospital. Said certificate ought to have been accepted as an evidence. The learned Tribunal has committed error by not accepting the said certificate. So far as medical bills are concerned, he submitted that on record there are bills showing that the claimant incurred expenses of Rs. 60,000/-. He also argued on the point of multiplier etc. He thus prayed that the appeal deserves to be allowed by granting compensation of Rs. 3 lakhs.

05. Learned Advocate Mr. Deshmukh for contesting respondent No.2 - insurance company opposes the appeal. He submits that the learned Tribunal has rightly appreciated the evidence. He relied on the judgment in the case of **Raj Kumar Vs. Ajay Kumar And Anr., (2011)**

ACJ 1. He submits that there is no proof to establish the fact of disability to the extent of 30%. He also submits that the Court has rightly held the claimant to be alible to the extent of 30% and he prays for dismissal of the appeal.

06. Learned Advocate Ms. Ansari for respondent No.1 also opposes the appeal. She adopted the arguments of learned Advocate Mr. Deshmukh.

07. In the present case it is seen that the learned Tribunal held the claimant to be liable to the extent of 30%. However, material shows that the charge-sheet was filed against the offending vehicle. In such case, this Court finds that the Trial Court erred in holding the claimant liable to the extent of 30%. This Court finds that the claimant was admitted from 03.12.2009 to 19.12.2009. There is no dispute about the fact that he suffered disability to certain extent. Only fact is that he could not prove this fact strictly. The certificate is issued by the Medical Officer In-charge. This Court finds that said certificate could not have been brushed aside, though was not specifically proved. This Court holds that the claimant would be entitled to Rs. 75000/- towards pain and suffering and Rs. 60,000/- towards medical expenses. The learned Tribunal ought

to have granted compensation of Rs.1,35,000/- . An amount of Rs. 54000/- already granted shall be deducted from the said amount. Thus, the appellant shall be entitled to Rs.81,000/-.

08. In the result, the appeal is partly allowed. An amount of Rs. 81,000/- (Rupees Eighty One Thousand Only) be paid to the appellant within six weeks from today along with interest @ 6% p.a. from the date of filing of the claim petition till its entire realization.

[KISHORE C. SANT, J.]