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

FIRST APPEAL NO. 2216 OF 2024

1. Reliance General Insurance Company,
ABC Complex C-9 & C-10,
Radhamohan Colony, Adalat Road,
Chhatrapati Sambhajinagar,
Maharashtra – 431001.

2. Tejas Narayan Pawar,
Age; Major, Occ; Business,
R/o; Balajinagar, Dahiwadi,
Tal. Maan, District; Satara ...APPELLANTS
(Orig. Respondents)

VERSUS

Sonal Sitaram Waykar,
Age : 32 years, Occ. None,
R/o; Hivare Khurd,
Behind Z.P. School,
Ozar- Otur Road,
Tal. Junnar, Dist. Pune.
Currently residing in Central
Bank Colony, Sutgirni Road,
Shrirampur 413709
Tq. Shrirampur, Dist. Ahmednagar. ...RESPONDENT
(Original Claimant)

....
Mr. A.S. Usmanpurkar : learned Advocate for appellants
Mr. S.S. Kote : learned Advocate for respondent
....

WITH

**CIVIL APPLICATION NO. 9072 OF 2024
IN
FIRST APPEAL NO. 2216 OF 2024**

Sonal Sitaram Waykar,
Age : 32 years, Occ. None,
R/o; Hivare Khurd, Behind
Z.P. School, Ozar- Otur Road,

Tal. Junnar, Dist. Pune.
Currently residing in
Central Bank Colony,
Sutgirni Road, Shrirampur 413709
Tq. Shrirampur, Dist. Ahmednagar. ...APPLICANT
(Original Claimant)

VERSUS

1. Reliance General Insurance Company,
ABC Complex C-9 & C-10,
Radhamohan Colony, Adalat Road,
Chhatrapati Sambhajinagar,
Maharashtra – 431001.

2. Tejas Narayan Pawar,
Age; Major, Occ; Business,
R/o; Balajinagar, Dahiwadi,
Tal. Maan, District; Satara ...RESPONDENTS
(Orig. Respondents)

CORAM : S. G. CHAPALGAONKAR, J.

Date of Reservation : 13.02.2025
Date of Pronouncement : 20.02.2025

JUDGMENT :-

1. Appellants (Original Respondents) filed this appeal impugning judgment and award dated 27.11.2023 passed by Motor Accident Claims Tribunal Shrirampur, District Ahmednagar (hereinafter referred to as "MACT" for brevity), in MACP No. 122 of 2021.

2. Hereinafter, the parties are referred to as per their original status in suit.

3. The Claimant suffered injuries in an accident dated 25.01.2021. She filed Motor Accident Claims Petition No. 122 of 2021

seeking compensation against owner and insurer of Tata Dumpar bearing registration No. MH-08-W-8403. It is contention of Claimant that while she was proceeding as pillion rider on motor cycle with her relative Devidas, Tata dumper gave dash to motorcycle from rear side. Eventually she suffered injuries to her left leg. Initially, she was admitted in Samarth hospital and thereafter, she was treated at Sancheti Hospital, Pune from 25.01.2021 to 30.01.2021. Her left leg has been amputated below knee. She lost her earning capacity. She holds degree of Bachelor Science (Agriculture) but she was in business of tailoring, marketing of cloths and beauty items. According to her, she was earning Rs. 25,000/- p.m. at the time of accident.

4. Appellant Insurance Company filed written statement, contending that insured dumper has been falsely implicated in accident, in alternative, contends that motorcycle rider was responsible for accident. The contentions regarding permanent disablement and consequential loss of earning capacity to Claimant were denied. Learned tribunal framed issues, recorded oral evidence of parties and finally passed an award for compensation of Rs. 33,69,190/- directing respondents to pay the same with interest @ 6% p.a.

5. Mr. Usmanpurkar, learned Advocate appearing for appellant/Insurance Company vehemently submitted that although accident occurred on 25.01.2021, First Information Report (for short 'FIR') has been lodged on 17.02.2021 depicting involvement of insured dumper. There is no explanation for inordinate delay in lodging FIR. Claimant could not record evidence of eye witnesses to accident. He would invite attention of this Court to cross-examination of Claimant, particularly her admission that she could not note registration number of offending vehicle. According to Mr. Usmanpurkar, learned Tribunal failed to take note of cross-examination of Claimant as well as defence putforth by Insurance Company and erroneously passed award. He would further submit that

except Claimant herself, none stepped into witness box to prove accident. Tribunal erroneously accepted Claimant's case as to permanent disablement and loss of earning capacity. Her income is excessively considered eventually, exorbitant award has been passed.

6. Per-contra, Mr. Kote, learned Advocate appearing for Claimant supports the judgment and award under appeal.

7. Having considered submissions advanced, first issue that arises for consideration is, as to whether Claimant proves accident involving insured dumper. In support of her claim, Claimant stepped into witness box. During her evidence, first information report, Crime details form – spot panchanama, injury certificate, disability certificate, income tax returns, medical bills have been exhibited. True, that the FIR has been lodged after 23 days of accident. Contents of FIR show that it has been lodged by rider of motorcycle i.e. Devidas Jadhav, who was also injured in said accident and hospitalized. After discharge from hospital he lodged FIR. Apparently, contents of FIR itself are self-explanatory and narrates plausible reason for delay. Later on, spot panchanama appears to have been recorded. Discharge summary of Sancheti Hospital shows that Claimant was admitted in Hospital on 25.01.2021 and "It was a case of road traffic accident between four wheeler and two wheeler. The patient was riding on two wheeler".

8. Claimant placed on record copy of charge-sheet Exh. 49. It shows that dumper driver has been charge-sheeted for offence of rash and negligent driving. Charge-sheet contains statement of an eye witness namely Mukund Tikekar, who narrates manner of accident and particulars of offending vehicle with its registration number. It is true, that none of eye witnesses entered into witness box but fact remains that Claimant herself is an eye witness of accident and she deposed about

involvement of dumper. Perusal of her cross-examination shows it was not suggested to her that insured vehicle has been falsely implicated. She was not suggested that owner of vehicle acted in collusion with her to falsely implicate vehicle. Mere suggestion put to her is that she is giving false evidence. At this stage, it would be apposite to refer to observations of Hon'ble Supreme Court in **Ravi Vs. Badrinarayan and Others - reported in (2011) 4 SCC 693**, which reads thus :

> *"17. It is well-settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.*
>
> *18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.*
>
> *19. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."*

9. Similarly in yet another judgment in **Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others - reported in (2020) 13 SCC 486** following observations are made :

> *"22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the 'Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."*

10. Looking to aforesaid expositions of law, it is clear that Claimant needs to bring on record foundational facts as regards occurrence of accident. Once Claimant discharge onus, it would be for the respondents to rebut the same. In present case, Claimant, who herself is an eye witness entered into witness box. Her cross-examination depicts that defence of false implication of vehicle or collusive claim is not put to her. Claimant has placed on record FIR, although delayed, but contains plausible explanation for delay. A complete copy of charge-sheet is tendered, which depicts that on full flagged investigation driver of dumper has been charge-sheeted. Charge-sheet contains statements of two eye witnesses. In that view of the matter, if insurance Company was to bring home its defence of false implication, they could have brought on record some positive evidence as to collusion between Claimant and owner of vehicle. The driver of insured vehicle could have been examined, or the investigating officer could have been called in witness box, however, except denial or plea of false implication of insured vehicle in written statement, no steps are taken by insurer. In that view of the matter, there is no substance in the contention of insurer that insured vehicle is falsely implicated.

11. So far as, assessment of compensation is concerned, Claimant has suffered amputation to her left leg below knee. Sancheti Hospital, where Claimant has been treated has issued certificate in Form (B), certifying that she suffered 50% of permanent disability. Claimant has also placed on record copy of Discharge Card giving details of medical treatment advanced to her. Claimant has placed on record income tax return Exhibit 31 for assessment year 2020-21, that has been uploaded on 30.12.2020, wherein, her total income is shown as Rs. 2,34,120/- from business. It is supported by income and expenditure account. Income tax return for the assessment year 2019-20 shows that her gross income is Rs. 3,02,476/-. All aforesaid documents are admitted in evidence and given exhibits without objection of respondents. Learned Tribunal has accordingly assessed her income @ 20,000/- p.m. and loss of earning commensurate to permanent disablement @ 50%. Tribunal rightly added 40% towards her future prospectus so also awarded compensation towards medical expenses, pains, sufferings, cost of artificial limb and assessed total compensation to Rs. 33,69,190/-, which appears to be just and proper.

12. In result, appeal sans merit, hence dismissed.

13. In view of dismissal of appeal, amount deposited by Original Respondent/Insurance Company be disbursed to Claimant as per directions stipulated in award passed by Tribunal.

14. In view of dismissal of First Appeal, the Civil Application stands allowed and is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/