



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2231 OF 2015

Pratibha Wd/o Krishna Jadhav,
Age : 39 Years, Occu. : Household,
R/o. Krushna Tent House,
Krushna Garden, Basmat Road,
Parbhani, Tq. & District Parbhani.

... Appellant
[Orig. Claimant]

Versus

1. Laxmibai w/o Ganpatrao Jadhav,
Age : 61 Years, Occu. : Household,
R/o Vaibhav Nagar, Karegaon Road,
Parbhani, Tq. & District Parbhani.
2. The Oriental Insurance Company,
through its Branch Manager,
Shivaji Chowk, Parbhani.
3. Yunuskhan s/o Daulatkhan Pathan,
Age : 50 Years, Occu. : Business,
R/o Akhada Balapur, Tq. Kalamnuri,
Dist. Hingoli.

... Respondents
[Orig. Respondents]

**WITH
CROSS OBJECTION STAMP NO. 33659 OF 2016**

The Oriental Insurance Company Ltd.,
Through it's Branch Manager,
Shivaji Chowk, Parbhani.

... Applicant
[Orig. Resp. No.2]

Versus

1. Pratibha Wd/o Krishna Jadhav,
Age : 40 Years, Occu. : Household,
R/o. Krushna Tent House,
Krushna Garden, Basmat Road,
Parbhani, Tq. & District Parbhani.

2. Laxmibai w/o Ganpatrao Jadhav,
Age : 62 Years, Occu. : Household,
R/o Vaibhav Nagar, Karegaon Road,
Parbhani, Tq. & District Parbhani.

3. Yunuskhan s/o Daulatkhan Pathan,
Age : 50 Years, Occu. : Business,
R/o Akhada Balapur, Tq. Kalamnuri,
Dist. Hingoli.

... Respondents

.....

Mr. M. P. Kale, Advocate for the Appellant in First Appeal No. 2231 of 2015 / Respondent No.1 in Cross Objection St. No. 33659 of 2016.

Mr. U. S. Malte, Advocate for Respondent No.2 in First Appeal No. 2231 of 2015 / Cross Objectitioner in Cross Objection St. No. 33659 of 2016.

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 17.12.2025

JUDGMENT :

1. Original claimant, who instituted M.A.C.P. No. 208 of 2008 for injury claim, is now taking exception to the judgment and award passed by learned Member, MACT/District Judge-2, Parbhani dated 15.07.2015, by which learned tribunal was pleased to allow the petition awarding compensation to the tune of Rs.1,55,000/- with 7.5% rate of interest.

Dissatisfied by the above order, and more particularly quantum, original claimant has come up in appeal.

2. In nutshell, appellant/original claimant set up accident claim petition contending that on 25.04.2008, she along with her relatives were travelling in Indica Car bearing no. MH 04 BW 9852. When the car was on Basmat Parbhani Road, Commander Jeep bearing No. MH 26 C 1119 coming from opposite direction gave dash to the Indica Car causing injuries to present appellant, and also her relatives Krishna, Sham and Subhash died in the said accident. It is averred that accident occurred due to rash and negligent driving of both the vehicles.

Compensation was thereby sought from respondent no.1 owner of Indica Car, its insurer Oriental Insurance and driver of the Jeep i.e. Yunuskhan.

The learned Member, MACT passed the following order :

“1. The petition is allowed with proportionate costs.

2. The respondent Nos. 1 and 2 are jointly and severally responsible to pay compensation to the tune of Rs.1,55,000/- [Rupees One Lac Fifty Five Thousand only] (excluding NFL amount) to the petitioner, with interest @ 7.5% per annum from the date of the petition i.e. 20.06.2008 till its realization.

3. The respondent Nos. 1 and 2 are directed to deposit the amount in the form of cheque or D.D. drawn in the name of the petitioner.

4. Award be drawn-up accordingly.”

3. Learned counsel would point out that appellant was incumbent of the car and was not responsible for the accident, however, learned Tribunal has recorded finding that, both vehicles are negligent for the accident and thereby fixed liability to the tune of 40% on the car and 60% on the jeep. He pointed out that, such finding ought not to have been recorded when driver of the commander jeep was solely responsible. His contention is that, here, there is no contributory negligence, rather, composite negligence. He also pointed out that moreover, petition has been dismissed against driver of the offending jeep. He also submitted that, quantum awarded by the tribunal is meager and not as prayed. According to him, in spite of disability certificate on record, the same has been discarded. For all above counts, he seeks indulgence by allowing the appeal.

4. In answer to above, learned counsel for the insurance company, who has also filed cross objection, justifies the contributory liability,

but according to him, claimant failed to prove that there was injury to her. Therefore, claim was false and baseless and without any foundation regarding suffering injury, or in turn, suffering any disability as alleged. According to him, the tribunal has already held in para 18 that injury certificate is not proved, nor medical expert is examined. Therefore, he finds fault in consideration of 13% disability arrived at by the Tribunal and urges to allow the cross objection.

5. Re-appreciated the evidence. The fundamental ground raised by the appellant-claimant is that, there was no contributory negligence and rather, jeep driver was solely responsible.

Findings of learned trial court to this extent are recorded in para 13. Learned Tribunal has recorded above finding on the strength of spot panchanama and indisputably, such evidence is required to be gone into while holding responsibility for accident. Therefore, revisited the spot panchanama which shows that, the 20 feet wide Vasmat-Parbhani tar road is running north-south and it is having 5 feet wide crude (kaccha) road on both sides. Indica car is on the western side (left side) of the tar road facing towards north. Jeep is facing towards south on the wrong side. Spot panchanama shows that, tyre marks of both vehicles are found at the scene of occurrence.

Admittedly, it is head-on collusion and therefore, both vehicles are contributing to the mishap. From the spot panchanama itself, who was liable to what extent cannot be inferred in this case, as there is apparently head-on collusion. Therefore, in the considered opinion of this Court, the findings of Tribunal are not in consonance with the documentary evidence to this extent.

6. The another contentions of meager compensation, failure to consider disability and also the cross-objection about consideration of 13% disability in absence of any evidence agitated by insurance company being interlinked, these issues are dealt together.

7. In support of loss of income, petitioner has placed her Income Tax Returns [ITR] at Exhibit 42 showing her yearly income as 1,27,450/-. Objection was raised by Insurance Company that said ITR was filed post accident. However, merely because at later point of time ITR is filed, itself is no good ground to discard such evidence.

8. As regards to injury is concerned, according to claimant, she has suffered fracture injury to left humerus at M/3, L/3, fracture to right tibia fibula and fracture to second left rib.

9. Insurance Company/present respondent had questioned, in the tribunal itself, the very alleged disability, more particularly in absence of non-examination of medical expert.

Learned Tribunal has, in para 18, observed that, accident was of 25.04.2008 whereas injury certificate was issued on 31.12.2008 and more importantly, here it seems that, the very author of the certificate was not examined by the petitioner. Still, it appears that, learned Tribunal went on to observe that percentage of disability is required to be reduced to 50% and so disability can be considered at the rate of 13%.

10. Consequently, here, though injury and disability is asserted, medical expert, who allegedly issued certificate Exhibit 41 is not examined. The Hon'ble Apex Court in the case of **Rajesh Kumar v. Yudhavirsingh and others** reported in MANU/SC./7686 2008 has held that, unless author of the certificate is examined, such evidence adduced is not admissible. Similar view is borrowed and taken in the case of **Raj Kumar v. Ajay Kumar** MANU/SC/1018 that mere production of disability or discharge certificate will not be the proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of

disability of the claimant is tendered for cross examination with reference to the certificate. Again similar view is reiterated in the case of *Sidram v. Divisional Managar, United India Insurance and others* MANU/SC/1493/2022.

11. Resultantly, in absence of substantive evidence of doctor who allegedly issued Exhibit 41, said disability certificate cannot be considered or taken into account.

Therefore, finding of learned tribunal to that extent is improper and in absence of evidence.

12. In the considered opinion of this Court, here, in absence of evidence of Doctor who assessed disability, the said certificate ought not to have been considered for calculating the percentage of disability. Therefore, in view of law laid down in *Rajesh Kumar* (supra), in stead of discarding the claim of disability, considering the benevolent provision, it would be just and proper to remand the matter back to the tribunal for fresh consideration by affording opportunity to both sides to re-agitate and by keeping all points open for reconsideration. In view of the above, the following order is passed :

ORDER

- I. The judgment and award dated 15.07.2015 passed by the Member, MACT/District Judge-2, Parbhani in M.A.C.P. No. 208 of 2008 is hereby quashed and set aside.
- II. The matter is remanded back to the Court of Motor Accident Claims Tribunal, Parbhani for fresh consideration.
- III. The learned Member, M.A.C.T., Parbhani shall endeavour to decide the matter afresh within six (06) months from the date of this order.
- IV. The First Appeal as well as the Cross Objection are accordingly disposed off with above directions.

[ABHAY S. WAGHWASE, J.]