

Harish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.816 OF 2023**

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The New India Assurance Co. Ltd.
Branch Karad, Shaniwar Peth, Karad
Dist: Satara
Present Address;
The New India Assurance Co. Ltd.
Mumbai Legal Hub
Ground Floor, Head Office, 87, M.G. Road
Fort, Mumbai- 400001.Appellant

Versus

1. Prashant Bhimrao Patil,
Age- 30 years, Occupation: Agriculture
R/o, Warunji, Taluka Karad,
District: Satara.
2. Prakash Baburao Jadhav
Age- years; Occupation : Business,
R/o. 845/175, Shivneri Building,
5th Floor, Baburao Jagtap Marg,
Byculla(W), Mumbai – 400 011.Respondents
(Respondent No.1
is Orig. Applicant
and Resp. No.2 is
Orig. Opp. Party
No.2)

Adv. Jyoti Bajpayee, for the Appellant.
Adv. Kalpesh Patil, Advocate for Respondent No.1.

**CORAM : SHIVKUMAR DIGE, J.
DATE : 14th OCTOBER, 2025.**

JUDGMENT :-

1. This Appeal is preferred by the Appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Karad, District: Satara, (for short “the Tribunal”).

2. It is contention of learned counsel for the Appellant that the Tribunal has considered monthly income of the Claimant at Rs.15,000/- per month without any evidence on record. Learned counsel further submitted that accident occurred due to sole negligence of the Respondent–Claimant. The F.I.R. was registered against Claimant, but this fact is not considered by the Tribunal and has fixed only 50% contributory negligence on the Claimant, which is erroneous. The Tribunal should have considered 100% negligence of the Claimant. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent–Claimant that due to accidental injuries, right leg of the Claimant has been amputated. He has suffered 90% permanent physical disability. At the time of accident, he was doing business and agricultural work, from which he was earning

Rs.15,000/- per month. After the accident, his earning has stopped, he has no source of income. Learned counsel further submitted that accident occurred due to sole negligence of driver of car, who gave dash to the Claimant, when Claimant was searching his mobile. The Tribunal has passed well-reasoned order, no interference is required in it, and requested to dismiss the Appeal.

4. I have heard both the learned counsel, perused impugned judgment and order passed by the Tribunal.

5. It is Claimant's case that on 30th August, 2008, he along with his friend Suryakant were proceeding on his motorcycle on Pune Bangalore Express Way and were approaching towards Karad. His friend Vijay was Pillion. As the Claimant noticed that his mobile phone had slipped from his pant pocket and fallen on ground, he stopped the bike and they started searching for the mobile by going adjacent to the road divider. At that time, the Maruti Swift car came from Karad side in rash and negligent manner and gave dash to the Claimant and his friend. As a result, they sustained grievous injuries. Due to said injuries, right leg of the Claimant has been amputated.

6. The offence was registered against the Claimant. To prove his case, the Claimant has examined himself. He has stated that accident occurred due to sole negligence of the driver of car, and he has been acquitted from the charges leveled against him. The driver of said car did not step into witness box to prove the negligence of the Claimant. While dealing with the issue of negligence, the Tribunal has observed that the place of accident is a straight road. Therefore, there was no difficulty to the driver of car to locate the presence of Claimant on road. Both the vehicles involved in the accident had the head lights on at the time of accident. Hence, it can be said that the Respondent No. 2/driver of car had a final opportunity to avoid the accident. However, he failed at it. Therefore, contributory negligence on the part of driver of car is apparent on the face of record. On that ground, the Tribunal has considered 50% contributory negligence of the driver of Maruti Swift car and 50% of the Claimant. I do not find infirmity in it. In my view, the place where accident occurred was a straight road. The driver of car had an opportunity to avoid the accident after noticing the Claimant and his friend who were searching for

mobile. But he did not do that. Moreover, to prove the negligence of the Claimant, the driver of Maruti Swift car did not step into witness box. Hence, the 50% contributory negligence on both the parties considered by the Tribunal is proper.

7. To prove income, the Claimant has examined himself at Exhibit-29. He has stated that he was an agriculturist and was also doing business, from which, he was earning Rs.15,000/- per month. To prove his income, the Claimant has examined (PW-5)-Sindhutai Sutar, the Sarpanch of Village Warunji. She has issued certificate at Exhibit-64 stating that the Claimant was running the stationary and gift article shop and due to accident he has closed his shop. The Claimant has placed on record the receipt of sale of jaggery and the amount of Rs.1,40,000/- received by him. Considering evidence on record, the Tribunal has considered Rs. 15,000/- per month as monthly income of the Claimant. I do not find infirmity in it. In my view, at the time of accident, the Claimant was 25 years old. By Minimum Wages Act, monthly income of the Claimant would go more than Rs.15,000/-. Due to accidental injuries, leg of the Claimant

is amputated, he has lost his earning and business. Hence, monthly income considered by the Tribunal is proper.

8. In view of the above, I pass the following order :

ORDER

- I. The appeal is dismissed. No order as to cost.
 - II. The Respondent No. 1-Claimant is permitted to withdraw the deposited amount with accrued interest there on.
 - III. The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rules.
 - IV. Record and proceeding be sent back to the Tribunal.
9. All pending applications, if any, stand disposed off.

[SHIVKUMAR DIGE, J.]