

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1355 OF 2003

Mahesh Ramkrishna Joshi

Age : Adult, Occ : Manager,

R/o. Shriram Transport Finance Company, 8/3

Sakal Nagar, Bane Road, Pune -411 007

... Appellant

Versus

1 The Tata Engineering and Locomotive Company,
Through Manager (Dispatch) having office at
TELCO, Pimpri, Pune – 411 018

2 Shri Sanju Dada Foli
Age : 21 years, Occ : Driver,
R/o. The Tata Engineering and Locomotive Co. Ltd.
C/o. Manager (Dispatch)
Pimpri, Pune – 411 018

3 The Divisional Manager
The New India Assurance Company Ltd.
Kolhapur Divisional Office, Kolhapur

... Respondents

.....

Mr. Abhinandan B. Vagyani i/b. C.M.Lokesh, Advocate for the Appellant.

Ms. Kalpana Trivedi, Advocate for Respondent Nos. 1 and 2.

Ms. D. Shalini Shankar, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATED : 15th JANUARY, 2025.

ORAL JUDGMENT:

1. This appeal is preferred against the dismissal of claim petition.
2. It is contention of learned counsel for the appellants / claimants that due to accidental injury. The appellant has suffered 15% permanent physical disability but this fact is not considered by the Tribunal. Learned counsel further submitted that accident occurred due to sole negligence of

driver of Tata Sumo but this fact is not considered by the Tribunal and dismissed claim petition which is erroneous. Learned counsel further submitted that to prove the disability the claimant has examined the doctor who has stated that claimant has suffered disability and due to disability claimant could not get promotion in his service and could not be posted outstation. Hence requested to allow the appeal.

3. Learned counsel for respondent No.3/Insurance Company submitted that offence was registered against the claimant for the said accident. He gave dash to the jeep from backside. The claimant was solely negligent for the said accident. No evidence was produced on record to prove the disability of the claimant. 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 the Judgment and Order passed by Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal"). It is claimant's case that on 22.03.1996, claimant was going to Gadhingalaj from Kolhapur on his motorcycle. The respondent No.2 was driving Tata Sumo ahead of the claimant. He was driving Sumo on right side of the road i.e. wrong side of the road. The claimant was riding his motorcycle at distance of about 15 to 20 ft. At the spot of incident the opponent No.2 without indicating signal abruptly stopped his

vehicle due to which petitioner could not either turned to the left or right side and while taking the motorcycle right side of the Tata Sumo, left knee guard of the motorcycle came in contact with right side bumper of Tata Sumo, it resulted into accident in which petitioner sustained injuries. To prove the negligence of driver of Tata Sumo the claimant has examined himself at Exhibit-31. He has stated that accident occurred due to sole negligence of the driver of Tata Sumo. In cross examination he admitted that spot of incident is on curve portion of the road and offence for the said accident was registered against him. While dealing with the issue of negligence, the Tribunal has observed that from spot panchanama at Exhibit-33 it appears that near the spot of accident there is curve on road and both the vehicles were proceeding towards South. Therefore the correct side of those vehicle was eastern side of the road. There was space to the claimant to go ahead to overtake the Tata Sumo. The story put up by the claimant is not reliable. The claimant has given dash to the jeep from backside hence accident occurred due to sole negligence of the claimant on that ground the Tribunal has dismissed the claim petition.

I am unable to understand the observations of the Tribunal as offence was registered on the complaint of Tata Sumo driver. After the accident, the claimant was admitted in the hospital. The accident occurred on the curve of the road. It shows substance in the contention of the

claimant. Moreover, to prove the negligence of the claimant, the driver of Tata Sumo did not enter into the witness box nor driver filed written statement before the Tribunal. The matter was proceeded against the driver and owner of the Tata Sumo ex-parte. The record shows that the claimant has been acquitted from the charges leveled against him. Accident was occurred between middle of the road as both the vehicles were going in the same direction and the claimant had dashed to the Tata Sumo from backside so, there is substance in the contention of the learned counsel for the claimant/appellant that driver of Tata Sumo abruptly stopped in the middle of road as the jeep was abruptly stopped the claimant who was driving motorcycle behind the jeep and in attempt to avoid the jeep dashed against the jeep, it shows accident occurred due to contributory negligence of driver of both the vehicles and I fix liability of 80% on Tata Sumo driver and 20% on the claimant.

5. It is the case of the claimant due to accidental injury he has suffered 15% permanent physical disability. He was working as a branch manager in Shriram Transport Finance at Kolhapur but due to accidental injuries he could not transfer out of that city and he could not get promotion. To prove the disability, the claimant has examined Dr. Sanjay Walake at Exhibit-49. He has stated that the claimant was admitted in his hospital for medical treatment. He had dislocation of left hip with fracture

posterior lip acetabulum and fracture of lateral condyle left tibia. He further stated that he gave treatment to the claimant. Post reduction X-ray shows there was fracture of acetabulum. He was discharged from the hospital on 30.04.1996. He was admitted in the hospital on 22.03.1993. He further deposed that the claimant has suffered 15% disability to the left lower limb. The disability certificate is at Exhibit-50. In cross examination he admitted that disability is only to single limb i.e. left lower limb. It appears from the record that medical bills were produced on record of Rs.36,000/- and these are admitted by the learned counsel for respondent No.3-Insurance Company. It has come in the evidence of claimant that his annual income was of Rs.1,20,000/-. I am considering the same income as annual income of the claimant. At the time of accident claimant was 30 years old. He is entitled for 50% future prospects.

6. Considering above calculations, the claimant is entitled for following compensation:

Particulars	Rs.	Entitlement
Annual Income	Rs.	1,20,000/-
15% Disability	Rs.	18,000/-
50% Future prospects	Rs.	9,000/-
Total Income	Rs.	27,000/-
Multiplier 16 X Total Income	Rs.	4,32,000/-
Loss of Special Diet and expenses	Rs.	10,000/-
Traveling expenses	Rs.	5,000/-
Pain and Suffering	Rs.	15,000/-

Medical expenses	Rs.	36,000/-
Total	Rs.	4,98,000/-
No fault liability	Rs.	25,000/-
Total	Rs.	4,73,000/-

This Court has considered 20% negligence on the claimant, if 20% amount is deducted from Rs.4,73,000/- it comes to Rs.3,78,400/-.

The claimant is entitled for compensation amount of Rs. 3,78,400/-.

7. In view of above, I pass following order :

ORDER

- i. The appeal is allowed.
- ii. The appellant /claimant is entitled for compensation amount of Rs.3,78,400/- @7.5% per annum from the date of filing claim petition till realisation of the amount.
- iii. The respondent No.3/Insurance company shall deposit compensation amount along with interest within six weeks.
- iv. The appellant /claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- v. R & P be sent back to the Tribunal.

8. The appeal is disposed of. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)