

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1500 OF 2008

Shri Somnath Vilas Katare
Age- 22 years, Occu. At present Nil,
R/o. Kharsundi, Tal. Atpadi, Dist. Sangli ...Appellant

V/s.

- 1) Shri Laxman Shankar Mali,
Age- Major, Occu. Driver,
R/o. Hivtad, Tal. Atpadi,
Dist, Sangli
- 2) Shri Bapu Yashwant Padalkar
Age- Major, Occu. Vehicle Owner,
R/o. Kharsundi, Tal. Atpadi,
Dist. Sangli
- 3) The New India Assurance Co. Ltd.,
Kolhapur Circle Office, Kolhapur,
(Policy No.151183/31/04/02104). ...Respondents

Mr. Tejpal S. Ingale, for the Appellant.
Ms. Urmila K. Sanil, for the Respondent No.3.
None for the Respondent Nos.1 & 2.

CORAM : SHYAM C. CHANDAK, J.

DATED : 10th MARCH, 2025.

JUDGMENT :-

. Present Appeal seeking an exception to a Judgment and Order dated 15th May 2008, in MACP No.160 of 2005, passed by the learned Member, Motor Accident Claims Tribunal, Sangli, thereby said claim filed under Section 166 of the Motor Vehicles Act, 1988 (“the Act”) has been dismissed with costs.

2) Heard Mr.Ingale, learned Advocate for the Appellant and Ms.Sanil, learned Advocate for the Respondent No.3.

3) Record indicates that, the Appeal was admitted on dated 3rd October 2008. Respondent Nos.1 and 2 have been duly served. However, none appeared for them when the Appeal taken up for final hearing.

4) Facts in brief are that, the Appellant filed the said claim therein it was averred that on 5th May 2005, at about 10:00 p.m., the Appellant was riding his motor cycle ("**M/cycle**") bearing No.MH-10/PB-2914 by *Kharsundi* Road and proceeding towards his village. When he reached near the house of *Uttam Patil* in the vicinity of village *Kharsundi*, a tanker bearing No.MH-10/A-6610 ("**tanker**") proceeding from *Kharsundi* towards village *Atpadi* came from opposite direction, driven in a high speed and without considering the situation of the road and gave dash to the M/cycle. Consequently, the Appellant fell on the road and suffered grievous injuries. Initially, Appellant was taken to a Doctor in the village and, for better medical treatment he was taken to the hospital of Dr. Parag Shah, at Sangli, where surgery was performed on his injuries. However, the injuries caused him disability.

4.1) The Appellant averred that, at the time of accident he was working as a private driver and also helping his father in agricultural

work, thereby he was earning Rs.5,000/- per month. However, he is not able to work and earn as before due to the disability. Therefore, the Appellant claimed a compensation of Rs.9,19,000/-.

5) Respondent Nos.1 and 2 filed their written statement (at Exh.26). The Respondent No.3 also opposed the claim filing a written statement (at Exh.27). They admitted that, Respondent Nos.1 to 3 were the driver, owner and insurer of the tanker at the time of the accident. Respondent Nos.1 and 2 contended that on 5th May 2005, there was a fair at village *Kharsundi*. Throughout the day, they were carrying water in the tanker for the said fair, by *Atpadi-Kharsundi* Road. At about 9:00 p.m, Respondent No.1 stopped the work of carrying the water. Therefore, they have no knowledge of the accident. They denied that the Respondent No.1 was driving the tanker rashly and negligently. They contended that the tanker was falsely involved in this accident with an intention to get compensation. Lastly, they contended that, as the tanker was validly insured as above and Respondent No.1 was holding a valid and effective driving licence, the liability to pay the compensation be saddled upon the Respondent No.3. The Respondent No.3 contended that, the Respondent No.1 was not holding valid and effective driving licence at the time of accident. For these and other reasons, the Respondent No.3 prayed to dismiss the claim.

6) To prove the claim the Appellant adduced his evidence (at Exh.38) and examined CW2-Devidas Bhau Katare (at Exh.40) on the point of his occupation and income.

7) The evidence of the Appellant is that at the time of accident, when he was riding the M/cycle on *Atpadi* to *Kharsundi* Road, the offending tanker came from opposite direction and dashed to his Motorcycle and thus, caused the accident. He deposed that the accident occurred due to rash and negligent driving of the tanker. In cross-examination the Appellant admitted that, after he fell down, he became unconscious. He regained the consciousness in the Public Health Centre, at *Kharsundi*. He has denied that, he regained the consciousness in the hospital of Dr. Shah. He has admitted that water tankers were plied on that road for the said fair.

8) Considering the aforesaid evidence and the Judgment of the Criminal Court thereby acquitting the Respondent No.1 of the charge of causing this accident, the Tribunal held that there was no possibility for the Appellant to see the face of the driver of the offending tanker or even the registration number of the tanker to mention about the same in the F.I.R. which was filed by his father after 15 days of the accident. Several such tankers were carrying the water from that road at the relevant time. The Tribunal, therefore, held that a possibility cannot be ruled out that some other tanker

dashed the M/cycle and caused the accident or, the Appellant's M/cycle itself skidded on the road. The Tribunal also held that the evidence as to the medical expenditures, occupation, income etc. is not reliable. Hence, the Tribunal dismissed the claim entirely.

9) However, the Tribunal failed to note that the Respondent Nos.1 and 2 have not entered into the witness box to prove their contention that the Respondent No.1 did not cause the accident or that, the said tanker was not at all involved in the accident. Similarly, the Tribunal did not note that the Respondent No.3 had not pleaded that the tanker was not at all involved in the accident or that, it was falsely implicated in the accident for compensation. The Respondent No.3 did not examine the Respondent Nos.1 and 2 to rebut the Appellant's evidence.

9.1) The Appellant had produced on record a photo copy of the F.I.R., spot panchanam and his injury certificate, below the list of document (at Exh.3) filed on dated 24.08.2005 i.e., about 3 years before passing the impugned Judgment and Order. Said documents were 'Certified as True' by a Station Officer, *Atpadi* Police Station. The Appellant adduced his evidence on 15th May 2008. However, it appears that the Advocate for Appellant did not show the said documents to the Appellant or asked any question in that regard, to prove the said documents and get marked in the evidence. Even the

Tribunal did not consider that said documents remained to be proved. In my considered view, the Tribunal should have considered that aspect while deciding the issues involved in the matter, because neither the Respondents claimed that the said documents were false nor they produced any evidence in their defence. Said documents are even available today on record in the Classified 'File – D', prepared by the Tribunal. Photocopies of certified copies of said F.I.R. and spot panchnama marked in the evidence at Exhs.49 and 30 respectively in the trial of Summary Criminal Case No.137/2005 arising out of this accident, are also produced in this Appeal.

9.2) It is well-settled that in the proceedings of Section 166 of the Act, the issue of negligence has to be decided on the basis of preponderance of probabilities and that, standard of proof beyond a reasonable doubt cannot be made applicable in such cases. In view of the above discussion, considering the definition of the word "Proved" stated in the Indian Evidence Act of 1872, the object of Section 166 of the Act and in the facts of the case, I deem it appropriate to rely upon the version of the Appellant in the interest of justice.

10) On a careful reading of the F.I.R., it revealed that, initially, the Mr. Ghatge, Police Station Officer had registered the said accident at No.19 of 2005. The investigation was then marked to Mr. P. M. Nikam, PSI who perused the *Vardi* of the accident filed by the

Appellant's father Vilas Yeshwant Katare. Said *Vardi* recorded that the offending tanker caused the accident as stated above and the Respondent No.1 fled from the spot without informing the accident to police. Then police recorded the spot panchnama of the spot, where pieces of broken indicator of the M/cycle were found. The statement of the Appellant and two other witnesses disclosed that the cause of the accident was rash and negligent driving of the offending tanker. Therefore, Mr. P. M. Nikam, PSI filed the said F.I.R. bearing No.50/2005, under Sections 279, 338 and 427 of I.P.C. and Sections 184 r/w. 134/177 of the Act, against Respondent No.1. Considering the evidence as a whole, the Appellant's father had no reason to give a false *Vardi* against his own village person. The injury certificate mentions that the Appellant was brought to Shaha hospital on 6th May, at about 2:30 a.m., for sustaining injuries in a road traffic accident on 5th May, at about 9:00 to 10:00 p.m.

11) In view thereof, I hold that the accident occurred due to rash and negligent driving of the tanker as deposed by the Appellant. As a result, the Appellant is entitled for compensation.

12) The evidence of the Appellant coupled with the Disability Certificate (Exh.39) show that, the Appellant had sustained fracture of right middle 1/3rd shaft femur and compound fracture of tibia-fibula upper 1/3rd. After the initial medical treatment at the PHC, *Kharsundi*

he was taken to the hospital of Dr. Shah. There, he was inpatient for 13 days, during which the fracture was operated and fixed. The same Dr. Shah medically treated the Appellant and issued the Disability Certificate. Said entire evidence did not receive sufficient challenge in the cross-examination. Hence, I hold the injuries as above.

13) The Appellant deposed that, he had incurred Rs.33,000/- on his medical treatment but no bills are produced to support the said fact. Yet it is significant to note that, the Disability Certificate was not objected when it was admitted in evidence. The Appellant was inpatient for 13 days and his fracture was treated with surgery. In view thereof, even if the Appellant did not produce the bills of medical expenses, it is probable that he had incurred some amount towards his medical treatment. Therefore and considering the Discharge Certificate, the claimant is entitled to receive Rs.30,000/-towards the medical expenditure.

14) Evidence of the Appellant and CW2-Devidas Bhau Katore is that Appellant is nephew of CW2, who was having a tempo. The Appellant was working as a driver on that tempo on a monthly payment/ *Bhatta* of Rs.4,000/-. The Appellant deposed that he was a professional driver and had a driving licence. In cross-examination of CW2 it has come that he had a tempo and he was giving it on hire. Thus, the said evidence as to occupation and income of the Appellant

did not receive much dent in the cross-examination. Therefore, it is safe to rely upon. That apart, considering the fact that the Appellant was an able bodied and aged 22 years, it can be presumed that he was capable to earn Rs.4,000/- per month by doing some unskilled labour. Hence, I hold that his monthly income was Rs.4,000/-.

15) The Appellant deposed that, he took 3 months bed rest at the advice of the doctor. As such there was loss of the income. Accordingly, the Appellant deserves to get Rs.15,000/- towards loss of 3/4 months income. Looking at the fracture injuries, the Appellant deserves to get total Rs.15,000/- towards special diet, transport charges and attendant services. The Disability Certificate states that, the Appellant has sustained 11% permanent partial disability. Therefore, the Appellant is entitled to receive total Rs.25,000/- towards 'pain and suffering' and 'loss of amenities of the life' including the Disability.

16) Thus, the claimant is entitled to get compensation totalling to Rs.85,000/-. Considering the facts of the case, the Appellant is entitled for 7.5% p.a. interest on the compensation amount from the date of the claim till realization of the said amount.

17) Upshot of the above discussion is that the Tribunal did not appreciate the evidence on record in its correct perspective. Therefore, there are infirmities in the impugned Judgment. As a

result, said Judgment and Order is liable to be set aside. Thus, the Appeal partly succeeds.

18) Hence, following order:-

- i) Appeal is partly allowed with proportionate costs.
- ii) The impugned Judgment and Order dated 15th May 2008, in MACP No.160 of 2005, passed by the learned Member, Motor Accident Claims Tribunal, Sangli is set aside.
- iii) MACP No.160 of 2005 is partly allowed.
- iv) The Respondent Nos.1 to 3 shall jointly and severally pay a sum of **Rs.85,000/-**. (Rs. Eighty Five thousand only) inclusive of NFL to the Appellant along with interest @ 7.5% p.a. from the date of application till realization.
- v) The aforesaid amount shall be deposited by the Respondents within two months from the date of uploading of this Judgment and Order on the official website of this High Court.
- vi) Immediately after deposit of the amount, the Tribunal shall issue notice to the Appellant to receive the amount.
- vii) The Appeal is disposed of, accordingly.

(SHYAM C. CHANDAK, J.)