Received on : 18-4-2013.
Registered on : 26-4-2013.
Decided on : 10-7-2015.
Duration : 2 Y 2 M 22 D

BEFORE : MOTOR ACCIDENT CLAIMS TRIBUNAL, L A T U R.

(Presided over by : P. K. Sharma.)

EXH. NO. ( )

MOTOR ACCIDENT CLAIM PETITION NO. 114/2013

Santosh S/o Pandit Katkar,
Age 30 years, Occup. Service, **CLAIMANT**
R/o Shyam Nagar, Latur.

V E R S U S

1. Sachin S/o Bhujang Mane,
Age Major, Occup. Business, **RESPONDENTS**
R/o Bedga, Tq. Omerga,
Dist. Osmanabad.

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 46 Whites Road,
Royapettaah, Chennai – 600 014.

PETITION UNDER SECTION 166 OF THE
MOTOR VEHICLES ACT, 1988.

Mr. P. S. Sonkawade,	Advocate,	for	Claimant.
Ex-parte	------------	---	Respondent – 1.
Mr. S. G. Doijode,	Advocate,	for	Respondent – 2.

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J U D G M E N T
(Delivered on 10th July, 2015)

1. This is a petition under Section 166 of the Motor Vehicles Act for compensation in respect of permanent disablement suffered by the claimant.

2. Brief facts of the case are as under :

It is contended that on 21-7-2012 the claimant along with nephew namely Chaitanya, was going to Polytechnic College on Ausa Road, Latur on a motor-cycle No. MH-24/Y-8649. The claimant was driving the motor-cycle. When the claimant took turn towards the college near Nandi stop, the respondent No. 1 who was driving Omni Car No. MH-24/C-9782, which was coming from Shivaji Chowk directions, gave dash to the motor-cycle. It is alleged that at the time of the accident, the respondent No. 1 was driving the car in a rash and negligent manner and at an excessive speed. Due to the dash, the claimant sustained several fractures and was admitted to Ashwini Accident and Neuro Care Center, Latur. He was admitted there on 21-12-2012 to 25-12-2012 and operated upon. An offence under Sections 279 and 338 I P C was registered against the respondent No. 1.

3. The claimant contended that at the time of accident, he was 38 years old and was working in M S E D C L as an Operator and was getting salary @ Rs. 18,000/- per month. Due to the accident, he has become permanently disabled and his future career is lapsed totally. According to him, due to the fracture of jaw bone, his many tooth have shaken and he is not in a position to chew his food properly and due to that many side effects have arisen. It is further contended that he is not in a position to sit, stand or walk for longer time, which is must in his career. The claimant has calculated compensation of Rs. 12,00,000/-, but restricted his claim to Rs. 1,00,000/-. It is contended that the car was owned by the respondent No. 1 and was insured with respondent No. 2.

4. The respondent No. 1 has not filed reply. Exh. 20 is a reply of the respondent No. 2. The insurance coverage of the car is not disputed by it. However, it has alleged breach of policy conditions. It has further contended that the accident took place due to the negligent act of rider of the motor-cycle. It has denied that due to the accidental injuries, the claimant has become permanently disabled. It has disputed the quantum of compensation.

5. Following issues are framed at Exh. 26. My findings

to them are as follows for the reasons next following :

I S S U E S	**FINDINGS**
1. Does the claimant prove that on 21-7-2012 he met with an accident involving omni Car No. MH-24/C-9782?	….. Yes.
2. Does the claimant prove that the accident took place due to rash and negligent driving of of Omni Car No. MH-24/C-9782 by the respondent No. 1? …..	The respondent No. 1 was negligent to the extent of 50 %.
3. Does the claimant prove that he has sustained permanent disability due to the accident?	Sustained 20 % body-wise disability.
4. Whether the respondent No. 2 proves that the respondent No. 1 has committed the breach of policy?	……. No.

5. Whether the claimant is entitled for compensation? If yes, how much and from whom.? …… As per final order

6. What order? As per final order

R E A S O N S

6. **As to Issue No. 1** : The respondent No. 1 has remained absent. The respondent No. 2 has not denied the accident and involvement of Omni Car No. MH-24/C-9782 in the accident. It has alleged only that the accident took place due to the negligence of the motor-cycle driver. Thus, the accident and the involvement of the car is an admitted fact and hence, I answer this issue in the affirmative.

7. **As to Issue No. 2 :** The claimant Santosh has examined himself at Exh. 22. He deposed that at the relevant time, he along with his nephew Chaitanya were going to Polytechnic on Ausa Road, Latur. He was driving the motor-cycle and Chaitanya was sitting behind him. According to him, he was driving the motor-cycle in slow speed taking utmost care. When the motor-cycle reached Nandi Stop and as he was turning towards college, the respondent No. 1 who was driving

the car in a rash and negligent manner at excessive speed could not control it and gave dash to the motor-cycle.

8. The claimant has filed the F. I. R. (Exh. 27). Ausa Road is north-south. Rajiv Gandhi Square is to the south and Shivaji Square is to the north on that road. The F. I. R. recites that the claimant's motor-cycle was coming from Rajiv Gandhi Square and the car was coming from Shivaji Square direction. There is a divider on that road. The accident took place near the crossing of Nandi stop. The accident took place when the motor-cycle had taken turn and came on the road from Shivaji Square to Rajiv Gandhi square after crossing the divider. The respondent No. 1 has not adduced any evidence to show that the motor-cycle driver was negligent. However, the fact of negligence can also be decided from other evidence.

9. As stated earlier, from the crossing of Nandi stop, the motor-cycle had taken turn and came on the other side of the road meant for the vehicles coming from Shivaji Square. Thus, before taking the turn, the claimant ought to have been careful. He should have seen whether any vehicle was coming from Shivaji Square direction. It appears that the claimant had not taken proper care before taking turn. Had he taken that care, the accident could have been avoided. Thus, certainly the claimant was negligent while driving the motor-cycle.

10. Though it is held that the claimant was negligent, the respondent No. 1 cannot be completely absolved from the liability. The accident took place near the crossing of the road.

At such place, all the vehicle drivers should drive their vehicles in a controllable speed so as to avert any untoward incident of sudden crossing of the road by other vehicles. It appears that the car was also in uncontrollable speed and thus, the respondent No. 1 also contributed to the accident. In such a situation, I hold both the drivers equally negligent and fasten liability on them in the ratio of 50 : 50. Hence, I answer this issue accordingly.

11. As to Issue No. 3 : The claimant has deposed that due to fracture of nasal and head bone and other grievous injuries, he is totally disfigured and lost all the expectations of his future career. To prove the percentage of disability, the claimant has examined Dr. Sudhakar Gulave at Exh. 73. Dr. Gulave deposed that on 29-10-2014 he examined the claimant clinically and radiologically. According to him, the claimant has sustained 35.6 % permanent disability due to fracture of anterior and lateral wall of orbit with fracture of right zygoma posteriorly with dis-articulation of right lower canine tooth with restricted strength of jaw. There was also dis-figuration of face. Accordingly, he issued the disability certificate Exh. 74. There is nothing in evidence to discard the same. According to him, the percentage of the disability is limb-wise. In my opinion, the body-wise disability should be taken as 20 %. Hence, I answer this issue accordingly.

12. As to issue No. 4 : Though the respondent

No. 2 has alleged breach of policy conditions, it has not adduced any evidence in that respect. Hence, I answer this issue in the negative.

13. As to Issue No. 5 : It is proved that the accident took place due to the contributory negligence of the respondent No. 1 who was driving the offending car and was owner of the same. The respondent No. 2 is the insurer of that car as per the insurance policy (Exh. 33). It reveals that the accident took place when the insurance policy was in force. Thus, the respondents No. 1 and 2 are liable to pay the compensation proportionate to the negligence of the respondent No. 1.

14. The claimant has calculated loss of earning while calculating the compensation. However, in his cross-examination, he has admitted that his salary and service is not affected due to the accident and disability. Thus, I hold that the compensation towards loss of earnings need not be granted. In the circumstances of the case, I hold that the claimant is entitled for compensation for disability. He has sustained 20 % disability. Thus, in my opinion, he should be awarded compensation of Rs. 40,000/- for disability. The claimant has filed medical bills of Rs. 40,162/-. Further, in my opinion, he is also entitled to Rs. 20,000/- for pains and sufferings. Thus, the total compensation comes to Rs.1,00,162/-. (Rs. 40,000/-

+ 40,162+ 20,000/-). I have held that the respondent No. 1 was negligent to the extent of 50 %. As such, the respondents would be liable to pay only 50 % of that amount which comes to Rs. 50,081/-. Hence, I answer this issue accordingly and pass the following order :

<u>O R D E R</u>

1. The application is allowed.

2. The respondents No. 1 and 2 shall pay, jointly and severally, compensation of Rs. 50,081- (Rs. Fifty Thousand Eightyone only) (including no fault amount under Section 140 of the M. V. Act) with interest @ 7.5 % per annum from the date of the petition in respect of permanent disability suffered by claimant.

Dated : 10-7-2015.

(P. K. Sharma)
Ex-Officio Member, MACT, Latur.