MHAH010043882021

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Decided on	:	05.09.2023
Duration	:	Ys. M. Ds. 02 00 20

MOTOR ACCIDENT CLAIMS TRIBUNAL, AHMEDNAGAR.

Present: Sudhakar V. Yarlagadda, Chairman.

M.A.C.P. No. 298 OF 2021 **EXH. 61**

Injury compensation claim petition under Section 166 of the Motor Vehicles Act, 1988

Petitioners: **Shri Akshay Vijay Bhingardive,**
Age now 28 Yrs, Occ. Education,
R/o Plot no.27, Deepnagar, Bhingar,
Tal.Dist. Ahmednagar.

Represented by: Advocate Shri S.A. Kotkar.

Versus

Respondents:

1) **M/s. Bafana Transport India,**
Loni Kalbhor, Tal. Haveli, Dist. Pune 411 001.

2) **Shri Ashok Rajendra Ghodake,** Age now 46 Yrs, Occ. Driver, R/o Gat no. 1475, Mangal-Murti Housing Society, Tamhane Wasti, Chikhali Bk, Tal. Haveli, Dist. Pune.

3) **The Branch Manager,**
United India Insurance Co. Ltd.,
Kisan Kranti Building, Second Floor, Market Yard, Station Road, Ahmednagar.

Represented by : Advocate Shri N.V. Sant, for Respondent no.3

Advocate Shri N.B. Todkar, for respondent no.2
Respondent no.1 -Exparte.

Date on which Judgment is reserved: Nil

DATE OF JUDGMENT: 05.09..2023

ORAL JUDGMENT

INTRUDUCTORY

The petitioner is claiming compensation of Rs. 10.00 Lakh on account of the injuries suffered by him and the damages caused to his Indica Car bearing no. MH-12-NB-5029 during road traffic accident with Tata Container vehicle bearing no. MH-12-FZ-4311. The container vehicle is owned by respondent no.1, driven by respondent no.2 and insured with respondent no.3. The accident occurred on 15.01.2021 at about 7.40 pm on Pune-Ahmednagar highway near Ashwin petrol pump. Ahmednagar Police registered crime no. I-32/2021 against the container driver. Hence, the petitioner filed this claim petition under section 166 of the Motor Vehicles Act 1988.

PETITIONER'S CLAIM

2. According to the petitioner, the accident occurred due to the fault of the container driver. Because, while the petitioner was driving his Car from Pune to Ahmednagar west-east road, the container suddenly and at a high speed came on the road from northern side petrol pump. Though the petitioner applied sudden brake, he could not avert the accident.

3. The petitioner was aged 26 years. He incurred medical expenses of Rs. 4.00 Lakh. Damages to his car occurred to the tune of Rs. 3.50 Lakh. He was studying 2nd year MBA. Due to the injuries sustained by him in the accident, his future prospects of employment and earning are damaged. Hence, he claimed compensation of Rs. 10.00 Lakh from the respondents with interest at the rate of 18% per annum.

WRITTEN STATEMENTS

4. **Respondent no.1** was served with the notice vide Exh.24, but remained absent. Hence, the matter proceeded exparte against respondent no.1.

5. **Respondent no.2** filed written statement at Exh.25 claiming that he was not at fault and the accident occurred due to the rash and uncontrolled driving of the Car by the petitioner. He denied the age, education, medical expenses, injuries, damages to the Car and the claim of the petitioner. He urged that in case any compensation is granted, respondent no.3 -insurance company is liable to pay the same. During the enquiry, he also remained absent.

6. **Respondent no.3** filed written statement at Exh.14 and opposed the claim by pleading that the container driver -respondent no.2 has no valid and effective driving licence. The container had no permit or fitness certificate. Hence, the terms and conditions of the insurance policy have been breached. It obtained permission under Section 170 of the Motor Vehicles Act to contest on merits.

ISSUES AND FINDINGS

7. I framed the following issues at Exh.29. I heard the arguments of learned advocate Shri S.A. Kotkar for the petitioner and Shri N.V. Sant for respondent no.3 -insurance company. None appeared for respondents no.1 and 2 during the inquiry and arguments. I have gone through the case papers. My findings and the reasons are as under.

	ISSUES	FINDINGS
1)	Whether the petitioner proves that he was injured due to rash or negligent driving of Tata Container bearing registration no. MH-12-FZ-4311 by respondent no.2 on 15.01.2021 at about 7.40 pm on Pune-Nagar Road at Chas village ?	Yes.

2)	Whether the petitioner proves that he sustained permanent physical disability due to said accident ?	No
3)	Whether respondent no.3 -insurance company proves breach of terms and conditions of the insurance policy ?	Yes.
4)	Whether the petitioners are entitled for compensation ? If yes, what shall be the quantum and payable by whom ?	Yes, as per final order.
5)	What order ?	Petition is allowed as per final order.

8. The petitioner adduced oral evidence of himself as PW1 at Exh.30, PW2 C.S. Shekatkar -insurance surveyor at Exh.44 and PW3 Dr. S.A. Kokare at Exh.50, and produced the following documentary evidence.

Exh.34	Police report dated 16.01.2021 by Anita Bhingardive.
Exh.33	Her police statement.
Exh.35	Printed FIR,
Exh.36	Crime details form with sketch map
Exh.37	Injury certificate issued by Saideep Hospital.
Exh.38	Registration Certificate of the container
Exh.39	Driving Licence of the container driver -respondent no.2
Exh.40	Insurance Policy.
Exh. 51	Form Comp B
Exh.55	Hospital Bills
Exh.45	Survey report of damages to the Car
Exh.47	Medical stores bills

9. Respondent no.3 -insurance company produced at Exh.59 -the container's particulars from the RTO Office, Pune showing that its permit expired on 08.09.2020. Respondents did not produce any oral evidence.

REASONS FOR THE FINDINGS

ISSUE NO.1

10. The petitioner testified at Exh.30 that the accident occurred due to the fault of the container driver i.e. respondent no.2. According to his testimony, while his car was going from West to East on Pune-Ahmednagar road from the northern side of the road divider, the container came across the road suddenly from the northern side. The petitioner applied the brake, butcould not avert the dash to the container.

ARGUMENTS

11. The petitioner's learned advocate referred to the above mentioned police papers especially, the sketch map provided in the crime details form (Exh.36) and the police statement of Anita Bhingardive and argued that the accident occurred due to the fault of the container driver.

12. The insurance company's learned advocate Shri Sant argued that the petitioner was at fault. Because, he saw the container, but drove the Car at a high speed and in such an uncontrollable manner that the car went and dashed to the container which was already crossing road from north and turning towards west, to go to Pune. He argued that police wrongly registered the crime against the container driver only because, it was the bigger vehicle involved in the accident.

CONSIDERATIONS

13. After considering the above discussed evidence of the petitioner and police statements of his mother -Anita at Exh.33 and 44 and the sketch map below the crime details form (Exh.36), I find that the

petitioner was driving the Car on main road. Though he deposed in the cross-examination that he could see the container in front of his Car, he denied that his car was in an uncontrollable speed and therefore, it dashed to the container. Since the container was approaching from the northern side to the main road, it is for its driver i.e. respondent no.2 to wait till passing of the Car which was on the main road. In these circumstances, the crime registered by the police against the container driver, cannot be said due to the only reason that the container was the bigger vehicle. The respondents did not examine respondent no.2 to rebut the evidence of the petitioner and the above mentioned police papers. Hence, I accept the arguments of the petitioner's learned advocate and hold that the accident occurred due to the fault of the container driver i.e. respondent no.2. Issue no.1 is answered in affirmative accordingly.

ISSUE NO.2

14. PW3 Dr. Sandip Kokare testified at Exh.50 that on 05.05.2022, he medically examined the petitioner in the OPD Section at Civil Hospital, Ahmednagar. According to his testimony, after physical and radiological examination, he found that the petitioner was suffering from on and off tinnitus with partial loss of memory, mild sensory neural hearing loss, with tingling numbness in upper limb with weakness in upper limb, hampering his normal routine activities. He opined that the petitioner suffered 22% disability. Accordingly, he issued Form Comp B vide Exh.51. He stated that considering the petitioner's qualification of MBA, he can say that those injuries hamper his memory and there will be loss in the capacity of his work.

15. During the corss-examination, Dr. Kokare admitted that the petitioner did not take any treatment from the civil hospital and he just issued Form Comp B certificate only. He admitted that in the certificate,

he did not mention the manner in which, he conducted the memory loss test. He admitted that some of his observations in the certificate are based on the oral complaint of the petitioner. He did not conduct any performance test while giving opinion about loss of his working capacity. He claimed that it is not necessary.

ARGUMENTS

16. With reference to the above mentioned medical evidence, the petitioner's learned advocate Shri Kotkar argued that the petitioner suffered from 22% permanent disability. The insurance company's learned advocate Shri Sant argued that there is no permanent disability and whatever injuries sustained by the petitioner, were healed by the medical treatment he has taken from Saideep Hospital. The evidence of PW3 -Dr. Kokare cannot be accepted as he based his opinion merely on the answers given by the petitioner and not on any scientific medical test.

CONSIDERATIONS

17. It is apparent from the evidence of PW3 Dr. Kokare itself that his opinion about the personal loss of memory etc. are based on the complaint given by the petitioner. He admitted that he did not conduct any scientific medical test. His claim that no scientific test is necessary, cannot be accepted. He pleaded and deposed that due to the accident, the petitioner feel always headache and giddiness, he is unable to hear from left ear, he suffers tingling to his right hand and his left hand movement also has become restricted. He claimed that he is unable to speak properly. But, the medical certificate at Exh.37 issued by Saideep Hospital does not show any injury to his right hand. Therefore, the petitiioner's claim that his right hand is suffering from on and off tingling due to the accident, is also exaggerated version. His evidence that his left hand's movement become restricted due to the accident, is also exaggerated version. Because, as per

this injury certificate, he had just blunt trauma to left shoulder and abrasion of 6 X 4 cm to his left elbow, which are mentioned as simple injuries. The injury certificate has a reference to the contusion and lacerated wound to his left temporal parietal bone. It also mentioned that he was admitted on 15.01.2021, operation was performed on 16.01.2021 and he was discharged on 23.01.2021 i.e. within 09 days days from hospitalization. Therefore, his evidence about the loss of memory, loss of speaking etc. which, he claimed as permanent disability, also shall be taken as exaggerated. Hence, I accept the arguments of learned advocate Shri Sant for the insurance company and answer issue no.2 in negative.

ISSUE NO.3

18. The licence at Exh.39 shows that respondent no.2 Ashok Ghodake has a valid and effective licence to drive transport vehicle from 06.01.1999 to 28.12.2025. The accident is dated 15.01.2021. Hence, the insurance company's claim that he has no valid and effective driving licence, is rejected.

19. The permit -Exh.59 shows that it expired on 08.09.2020 and it was not renewed thereafter till 02.12.2022. Learned advocate Shri Sant argued that as the container had no valid permit, the terms and conditions of the insurance policy are breached and therefore, the insurance company is not liable to pay the compensation. Learned advocate Shri Kotkar argued that even if it is accepted the principle of direction to the insurance company to pay and recover is liable to be issued, for that purpose, he relied upon *Amrit Paul Singh and anr. Vs. Tata AIG General Insurance Company Ltd. and ors. 2018(3) TAC 1 (SC)*. I find that this authority is applicable as the facts are similar that though respondent no.3 issued insurance policy to the container of respondent no.1, the vehicle did not have valid permit. Therefore, issue no.3 is answered in affirmative.

ISSUES NO.4 AND 5

20. Though the petitioner's claim of permanent disability has been rejected, his claim for compensation for the injuries sustained by him and the damages to his Car are liable to be considered. Relevant guidelines have been laid down by the Hon. Supreme Court in the case of *Raj Kumar Vs. Ajay Kumar 2011 (1) SCC 343.* As per the guidelines, the petitioner being injured, is liable to be granted compensation towards loss of income during the hospitalization and bed rest period. Considering the injuries, I deem that two months period is liable to be considered as bed rest period in addition to the hospitalization period of 15.01.2021 to 23.01.2021 (09 days).

21. Regarding the quantum of loss of income, the petitioner was studying MBA 2nd year at the time of the accident. Indisputably, he was not earning income at that time. The petitioner's learned advocate urged for considering his notional income as Rs. 10,000/- pm. Considering his educational qualification, I deem it a just and proper notional income. Considering Rs. 10,000/- pm, per day income comes to Rs. 334/- As such, the petitioner is entitled for loss of income of 69 days (i.e. admission period 09 days + 60 days bed rest period).

22. The petitioner produced medical store bills of Rs. 46,553/- (List Exh.47) and hospital bills totaling Rs. 1,37,000/- (Exh.56 to 58). He is entitled for their reimbursement totaling to Rs. 1,83,533/- (Rs, 46,553 + Rs. 1,37,000/-). The petitioner is entitled for special diet allowance as Rs. 200/- and attendant charges which also I quantify as Rs. 200/- per day. He is also entitled for conveyance expenses to and from hospital, which I quantify as Rs. 10,000/-. Considering the injuries sustained, hospitalization period and treatment taken, he is entitled for compensation towards the pain and suffering, which I quantify as Rs. 1.00 Lakh.

EVIDENCE ON DAMAGES

23. Regarding the compensation towards the damages to the Car, the petitioner adduced evidence of the insurance surveyor PW2 -Shekatkar. He deposed at Exh.44 that he assessed the damages as Rs. 3,81,938/- He deposed that the Car was damaged beyond repairs. Accordingly, he issued his survey report viude Exh.45. During the cross-examination, he stated that he conducted its survey on 13.06.2022 while the accident occurred on 15.01.2021. At that time, it was still at Bhingar Police Station. He considered its depreciation as Rs. 2,47,000/- He admitted that for the purpose of insurance, the depreciation is to be deducted from the total loss. After his survey, he did not check whether the repairs were carried out or not.

ARGUMENTS

24. The insurance company's learned advocate argued that the petitioner ought to have produced the bills showing how much expenses he incurred for its repairs. According to him, in absence of such details, the compensation towards the damages cannot be awarded merely on the basis of the survey report. The petitioner's learned advocate argued that the Car was damaged beyond repairs. Therefore, it was left at Bhingar Police Station itself.

CONSIDERATIONS

25. I find merit in the submission of petitioner's learned advocate. The photographs filed along with the survey report show that the Car was damaged beyond repairs. Therefore, the contention of the learned advocate for the insurance company that first the petitioner should have got the Car repaired and then produce the bills, cannot be accepted. The surveyor estimated total value of the Car as Rs. 6,21,801 and prepared a detailed

report of its estimated expenses part-wise which is to the tune of Rs. 3,81,938/- In the petition, the damages are shown as Rs. 3,50,000/-, but I find at the time of the petition, the survey was yet to be conducted. Therefore, I hold that the petitioner is entitled for compensation towards damages of the Car to the tune of **Rs. 3,81,938/-**

26. The computation of the compensation is as follows.

	Components			**Rs.**
A)	Expenses relating to treatment, hospitalization, medicines: As per the medical and hospital bills produced by the petitioner as per **Exh.47 -list** i.e. **Rs. 46,553/- + Exh.56 to 58** i.e. Rs. **1,37,000/-** are granted as the expenses relating to the treatment, hospitalization and medicines.			183553
B)	Expenses towards transportation: I estimate the conveyance charges to and fro the hospital as:			10000
C)	Expenses towards Nourishing food for the period of **69 days i.e.** hospitalization 09 days and 60 days bed rest period post-discharge:	Rate Days	200 69	13800
D)	Attendant Allowance for the period of **67 days i.e.** hospitalization 07 days and 60 days bed rest period post-discharge:	Rate Days	200 69	13800
E)	Loss of earnings during the hospitalization period, considering notional income of the petitioner as Rs.334/- per day.	Rate Days	334 69	23046
F)	Damages for pain, suffering and trauma as a consequence of the injuries:			100000
G)	Compensation towards damages of the Car			381938
	Total Compensation (A to G)			726137

	Less – NFL amount already granted.			25000
	Net Compensation amount			701137

27. In view of the aforesaid discussion, the petitioner is entitled for compensation of Rs. 7,01,137/- excluding the No Fault Liability (NFL) amount already granted vide order below Exh.28 dated 17.06.2022.

28. For want of permit, the terms and conditions of the insurance policy have been breached. For the reasons stated herein-before, respondent no.3 -insurance company is liable to pay with liberty to recover it from respondent no.1. So far as the petitioner is concerned, he is entitled to recover the compensation from all the respondents. Accordingly, issues no..4 and 5 are answered and the following order is passed.

FINAL ORDER

1) Claim petition is partly allowed with proportionate costs as follows.

2) The petitioners are granted total compensation of **Rs.7,26,137/-** including amount of "No Fault liability" along with interest @ 7.5 % per annum from the date of filing of petition (16.08.2021) till the realization of compensation amount, payable by respondents no.1 to 3.

3) Respondent No.3 -insurance company already paid NFL amount of Rs. 25,000/- vide order below Exh.28 dated 17.06.2022. It shall pay the balance amount of **Rs. 7,01,137/-** (Seven Lakh one thousand one hundred thirty-seven only) to the petitioner, along with interest at the rate of 7.5% per annum from the date of filing of petition, and then to recover the whole paid amount from respondent no.1 -owner on “pay and recover” principle.

4) Upon deposit or realization of the said compensation amount, it be paid to the petitioner by account payee Cheque or NEFT.

5) Upon payment of the said amount by respondent no.3, it is entitled to recover the said total compensation from respondent no.1 by executing this award without filing separate Suit. It is entitled to recover the said whole amount with 7.5% pa interest from the date of payment till realization.

- Award be drawn accordingly.

SUDHAKAR VENKATESHWARRAO YARLAGADDA

Digitally signed by SUDHAKAR VENKATESHWARRAO YARLAGADDA
Date: 2023.09.06 15:23:31 +0530

(Sudhakar V. Yarlagadda)

Ahmednagar. Chairman, Motor Accident Claims-
Date : 05.09.2023 Tribunal, Ahmednagar.

<u>CERTIFICATE FOR UPLOADING TO CIS.</u>

I affirm that the contents of this PDF file judgment are same word to word, as per the original.

Name of Steno	:	N.B. Peerjade.
Name of Court	:	Principal District & Sessions Court, Ahmednagar.
Judgment Date	:	05.09.2023
Order signed by the P.O.	:	06.09.2023
Order uploaded on	:	06.09.2023