

**(2023) 08 BOM CK 0078**

**In the Bombay High Court**

**Case No : First Appeal No. 1844 Of 2018**

Bhaskar Shankar Jagtap

APPELLANT

Vs

Suresh Subhash Ghule And Others

RESPONDENT

**Date of Decision : 28-08-2023**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation : (2023) 08 BOM CK 0078**

**Hon'ble Judges : S. G. Chapalgaonkar, J**

**Bench : Single Bench**

**Advocate : ?V. S. Khairnar, A. S. Usmanpurkar**

**Final Decision : Partly Allowed**

## **Judgement**

S. G. Chapalgaonkar, J

1. The appellant / original claimant impugns the judgment and award dated 01/04/2016, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition [MACP] No.355/2008, thereby seeking enhancement of compensation.

2. The appellant / claimant had approached the Tribunal at Jalgaon vide MACP No.355/2008 claiming compensation of Rs.3,00,000/-towards damage to the truck owned by him in an accident that took place on 02/10/2006. The claimant contends that he owns a truck bearing registration No. MH-19-Z-1392 and it was proceeding towards Mumbai. The driver, namely, Eknath Hansraj was driving the said truck in moderate speed as per traffic rules. However, offending container bearing registration No.MH-06-K-8407 came from Mumbai and dashed on the driver side of the truck. The accident occurred due to sole negligence on the part of the driver of offending container i.e. respondent no.1. Consequently, Crime No.139/2006 was registered at Igatpuri Police Station against him. The claimant contends that surveyor has assessed the damage and consequential loss caused to the truck and given estimate of repairs. As such, he claimed total

compensation of Rs.3,00,000/- from the owner, driver and insurer of offending container.

3. The claim petition was contested by the respondents. The claimant relied upon his own evidence and deposition of surveyor Mr. Chimote [PW-2], who has placed on record a survey report at Exhibit-35. He estimated cost of repair to the tune of Rs.1,90,490.50/- as per the details mentioned in the survey report. No evidence is recorded on behalf of the respondents. The Tribunal, on evolution of evidence, partly allowed the claim petition and directed the respondents to jointly and severally pay the compensation of Rs.79,000/- along with interest @ 7.5% per annum to the claimant. The aggrieved claimant approaches this Court in appellate jurisdiction under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] and seeks enhancement of compensation.

4. Mr. Khairnar, learned Advocate appearing for the appellant / claimant would submit that the incident was reported to the Police. Accordingly, the FIR was registered against respondent no.1 i.e. driver of offending container. By inviting attention to a copy of charge-sheet [Exhibit-24], he submits that after due investigation, the driver of offending container was found responsible to the accident. He would invite attention of this Court towards the contents of panchnama, which shows that, the Truck driver had applied the brake when he saw the offending container suddenly came to the wrong side. He would further invite attention of this Court to the police statements of the witnesses of the accident, which are made a part of record before the Tribunal. He would therefore urge that the Tribunal has erroneously recorded the finding of contributory negligence against both the drivers. He would submit that there is ample material on record to conclude that the driver of container was sole responsible for the accident.

5. Per contra, Mr. Usmanpurkar, learned Advocate appearing for respondent no.3 – i.e. insurer of container vehemently submits that the Tribunal recorded the finding on the point of negligence considering the evidence on record. He submits that the accident occurred on 30 feet wide road. There was head-on collision of the vehicles, which suggests equal contribution of both the drivers in the cause of accident. He would further submit that the claimant failed to record the evidence of Truck driver, who was a best person to explain the nature of accident. The withholding evidence by the claimant is sufficient to draw adverse inference against him. The Tribunal took holistic view of the matter and arrived at conclusion that both the drivers are equally responsible for the accident and passed the just award.

6. Having considered the submissions advanced by the learned Advocates appearing for the respective parties, apparently, there is no dispute as regards to the accident and damage suffered by the vehicle in question. The core issue that is raised in this appeal is relating to correctness of finding on the point of negligence recorded by the Tribunal. It is evident that both the parties have relied upon the police papers to advance their contentions. Both the drivers have

failed to step into the witness box. The primary burden to prove that the accident occurred due to the fault on the part of the container driver is upon the claimant. A complaint in respect of the accident was lodged by the police constable, namely, Mr. Chandu Awhad. He made inquiry with the witnesses that included occupants of the truck and container. The statement of both the drivers were recorded, then he concluded that the container driver went on wrong side and dashed against Eicher truck bearing registration No.MH-19-Z-1392. Accordingly, the offence is registered against the driver of container. Perusal of spot panchanama shows brake marks of truck, which shows that an attempt to avoid accident by Truck Driver. The container driver dashed on driver side of the truck, which is indicative of negligence on his part. The spot panchnama do not depict the picture of the accident. It only records position of the vehicle after accident. The spot of the accident is not specifically marked. Therefore, no conclusion can be drawn based on such document. It appears that along with evidence affidavit, the claimant has placed on record the statement of witnesses recorded by the Investigating Officer. Those are indicative of negligence of container driver. In that view of the matter, it can be gathered that cause of accident is attributable to negligence of respondent no.3 i.e. driver of container. The respondent did not examine container driver to explain circumstances leading to accident or dislodge contents of FIR. The Tribunal assumed equal contribution of both the drivers in the cause of accident but close scrutiny of the evidence indicates that the container driver was sole responsible. This Court has no hesitation to hold that the driver of container was responsible for cause of accident. No negligence can be attributed to the driver of truck.

7. The Tribunal has wrongly appreciated the evidence of surveyor and his report. It is placed on record at Exhibit-35. The surveyor estimated loss of Rs.1,90,490.50/-. The details of damages are specified at Exhibit-38. Therefore, there is no impediment in considering that the claimant suffered loss as assessed by the surveyor i.e. Rs.1,90,490.50. The amount of Rs.12,000/- can be deducted towards the value of salvage as per surveyor report. It is admitted by surveyor that he assumed rates of spare parts as per showroom price for assessment of loss. He further admits that rates of spares in general market are much less. Claimant has not filed bills of repair on record, hence 25% amount can be deducted on that count. Since, the total loss suffered by the claimant is Rs.1,78,490/- Resultantly, the liability to the extent of 75% of the aforesaid amount can be fixed against respondent nos.1 to 3. As such, the claimant would be entitled to Rs.1,33,793/-. Hence, the following order:

#### ORDER

- a) The appeal is partly allowed.
- b) The Judgment and award dated 01/04/2016 passed by the Motor Accident Claims Tribunal, Jalgaon, in MACP No.355/2008 is partly modified.
- c) The respondent nos.1 to 3 shall pay jointly and severally the total

compensation of Rs. 1,33,793/-. [Rupees One Lakhs, Thirty-Three Thousand, Seven Hundred Ninety-Three Only] to the claimant along with interest @ 6% per annum from the date of petition till the date of realization.

d) The amount paid / disbursed in the terms of award passed by the Tribunal be appropriated against the aforesaid amount.

e) On deposit of compensation amount, it be disbursed to the claimant.

f) On deposit of deficit court fees, if any, the modified award be drawn up accordingly.