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**(2003) 12 BOM CK 0074**  
**In the Bombay High Court**  
**Case No : First Appeal No. 125 of 1993**

Sharad Kolhe

APPELLANT

Vs

Baldeo Raj Chhabra and Another

RESPONDENT

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**Date of Decision :** 10-12-2003

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 166, 17

**Citation :** (2004) 2 ALLMR 51 : (2004) 106 BOMLR 12

**Hon'ble Judges :** S.T. Kharche, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.T. Kharche, J.—Heard the learned Counsel for the appellant and respondent No. 2. None for the respondent No. 1 though served.

2. This appeal is directed against the judgment and award dated 17.10.1992 passed by the Member, Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 178 of 1990 filed u/s 166 of the Motor Vehicles Act, 1988 (for short, the Act) on the contentions that the compensation awarded is grossly inadequate.

3. Brief facts are as under:

The accident occurred on 26.10.1989 at about 9.00 a.m. in front of Gondawana Wine Shop, Ravi Nagar, Amravati Road, Nagpur. The claimant was going to attend his college on bicycle and at that time the offending truck bearing No. MTG 4200 owned by respondent No. 1 had come from the back side in a high speed. The truck gave dash to the claimant causing him grievous injuries and consequential permanent disablement. The claimant was immediately removed to the hospital where he took medical treatment and thereafter he had filed the claim petition claiming compensation of Rs. 1,38,800/- on various counts.

4. The respondent No. 2 combated the claim and filed written statement. The Tribunal on considering the evidence adduced by the claimant had come to the

conclusion that the claimant had sustained injury in an accident arising out of the use of motor vehicle i.e. truck bearing No. MTG 4200, that the truck was being driven in rash and negligent manner on the relevant date and time. However, the Tribunal was of the opinion that the claimant was also negligent and therefore, he held that this was a case of contributory negligence and deducted 50% from the amount of compensation of Rs. 25,000/- and awarded the compensation of Rs. 12,500/- with interest at the rate of 12% per annum from the date of petition inclusive of the claim of no fault liability. This award has been challenged in the present appeal.

5. Mr. Ingle, the learned Counsel for the claimant contended that the claimant was a young boy of the age of 18 years and was taking education in the college and he had sustained 25% permanent disability, and therefore, the Tribunal ought to have granted just and reasonable compensation. He contended that the Tribunal has committed an error by holding that the claimant was rash and negligent in riding on the bicycle and therefore, deduction of 50% of the amount on account of contributory negligence of the claimant, cannot be sustained in law. He contended that the Tribunal jumped to the conclusion that this is a case of contributory negligence because of the non-examination of eye-witness Surendra, whose name has figured in the first information report. He further contended that the Tribunal ought to have granted compensation on various counts including loss of earning capacity, medical expenses and taking into consideration that damages are to be awarded on two counts, i.e. pecuniary and non pecuniary damages.

6. Mr. Somalwar, the learned Counsel for respondent No. 2 Insurance Company fully support the impugned award passed by the Tribunal and contended that there were two cyclists proceeding on the road at the time of incident and they had pushed each other at that time because of which they had fallen down and the claimant sustained the injuries. He further contended that claimant did not sustain any kind of permanent disability and since the doctor has not been examined, it cannot be said that the claimant had sustained 25% permanent disability. He contended that bills for medical expenses have not been produced on record as the treatment was taken by the claimant in the Government Hospital. He contended that the claimant was not earning anything, and therefore, the question of granting compensation on account of loss of earning capacity does not arise. He further contended that there is no merit in the appeal which is liable to be dismissed.

7. I have carefully considered the contentions canvassed by the learned Counsel for the parties. It is not disputed that the claimant had sustained grievous injuries in an accident arising out of the use of motor vehicle i.e. truck bearing No. MTG 4200 and this truck is admittedly owned by the respondent. No. 1. There appears to be no dispute that the truck was being driven in a rash and negligent manner on the date of the accident. The Tribunal has considered the evidence and recorded the finding that the offending truck had given dash to the

bicycle of the claimant from the back side and there is no reason for this Court to take a different view of the matter.

8. The Tribunal has also held that the claimant cyclist was negligent in riding on the bicycle and therefore, the Tribunal has deducted 50% from the amount of compensation which was computed by him to the extent of Rs. 25,000/-. In this context it would be relevant to note that in absence of any evidence to show that there were two cyclists on the road, and that they had dashed each other and therefore, the claimant had fallen down and sustained injuries, cannot be accepted. When it reveals that the claimant was riding on his bicycle and the dash has been given to the bicycle from the back side, then it is not possible to accept, the contention of the respondent No. 2 that the claimant was negligent in riding on his bicycle. The driver of the truck was expected to exercise due care and skill in order to avert the accident, but instead, he straightway gave dash to the bicycle of the claimant and that too in the broad day light at about 9.00 a.m. Hence, this Court is of the considered view that the Tribunal has committed an error in deducting 50% of the amount of compensation on account of contributory negligence and it is obvious that this is not a case wherein it could be said that the accident occurred due to the rash and negligent riding on the bicycle. To this extent the award deserves to be modified.

9. That takes me to the question of computation of the damages. It is settled law that if a person suffers grievous injuries, pecuniary and non pecuniary damages are to be awarded. It may be useful to refer the decision of Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, wherein it is observed that: "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant towards : (i) medical attendance, (ii) loss of earning of profit, up to the date of trial; (iii) other material loss. So non pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine by the award must reflect that the different circumstances have been taken into

consideration".

10. In the present case, though it is contended that claimant has sustained 25% permanent disability, there is no evidence to show this fact. The claimant has admittedly look treatment in Government Medical College, Nagpur with the following injuries;

(i) Crushing injury to right foot.

(ii) Dislocation of first and fifth metatarsophalangeal joint.

(iii) Compound fracture of Metatarsal.

Dr. Sajal Mitra (P.W. 1) is examined, but he has only stated that the claimant had sustained permanent disability, but he did not give the percentage of permanent disability. In the cross examination, he says that in this particular case, wound of the petitioner was expected to heal in a period of 1 1/2 or 2 months. In such circumstances, it is apparent that the Tribunal was perfectly justified in coming to the conclusion that the claimant had sustained permanent disability and therefore, computed the damages to the extent of Rs. 25,000/- which was inclusive of the claim on account of no fault liability. Even otherwise, the award of compensation of Rs. 25,000/- would cover the pecuniary damages and non pecuniary damages because the claimant did not adduce any evidence to show as to whether he had incurred any medical expenses. He did not produce the medical bills on record. He also did not adduce any evidence to show as to what was the loss of earning of profit up to the date of the trial and other material loss. Therefore, this Court is of the considered opinion that the computation of the damages could be made as under:

It is obvious that the award of Rs. 25,000/- in all would be just, fair and reasonable in the facts and circumstances of this case and the award of the Tribunal needs to be modified accordingly.

11. That takes me to consider the question of award of interest and in this context reference may be had to the decision of the Supreme Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, wherein it was that: "Now, we have to fix up the rate of interest. Section 17 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf. Earlier, 12 per cent was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9 percent on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 percent per annum from the date of the claim made by the appellants. The amounts of Rs. 50,000/- paid by the Insurance Company u/s 140 shall be deducted from the principal amount as on the date of its payment and interest

shall be recalculated on the balance amount of the principal sum from such date".

12. In the present case also award of interest @ 9% per annum from the date of petition till realisation would be reasonable and as such the claimant is held to be entitled to receive the compensation of Rs. 25.000/- with interest @ 9% per annum, as mentioned above. The amount already paid by the Insurance Company shall be deducted from the principal amount as on the date of its payment and interest shall be recalculated on the balance amount of the principal sum from such date.

13. In the result, the appeal is allowed in the aforesaid terms and conditions with costs throughout.