



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2531 OF 2021
WITH
CIVIL APPLICATION NO.10624 OF 2025
IN FA/2531/2021
WITH
CIVIL APPLICATION NO.11650 OF 2021
IN FA/2531/2021
WITH
CIVIL APPLICATION NO.11530 OF 2025
IN FA/2531/2021

1. The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch at – Corporate Business Unit-7,
Red Cross Place, First Floor,
Kolkatta – 700 001.
2. The Oriental Insurance Co. Ltd.,
Through its Divisional Manager,
Divisional Office at G. G. Road Sant,
Krupa Market, Vazirabad,
Nanded (M.S.)

... Appellants
(Orig. Respondent
Nos.2 and 3)

Versus

1. Nilesh S/o. Shankar Jadhav,
Age : 24 years, Occu. : Helper to JCB,
R/o. Chilli (Jahagir), Post : Sukli,
Tq. Mahagaon, Dist. Yavatmal (M.S.),
At present : Jaynagar, Nanded,
Tq. & Dist. Nanded.
2. Vasant Gobra Chavhan,
Age : Major, Occu. : Business,
R/o. Amni (Kd.), Post. : Mahagaon,
Tq. Mahagaon, Dist. Yavatmal.

... Orig. Claimant

... Respondents

.....

Mr. Uday. S. Malte, Advocate for Appellants.
Mr. G. K. Muneshwar, Advocate for Respondent No.1.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15 OCTOBER 2025

PRONOUNCED ON : 17 OCTOBER 2025

JUDGMENT :

1. Original respondent no.2 and 3 hereby take exception to the judgment and award dated 03.05.2015 passed by learned District Judge-5, and Ex-Officio Member of MACT, Nanded in M.A.C.P. No. 44 of 2014 awarding compensation to the injured original claimant - respondent herein with further directions to insurance company to first pay and then recover from original respondent no.1.

FACTS GIVING RISE TO CLAIM PETITION ARE AS UNDER

2. On 30.04.2013, JCB machine was being operated for canal work. Injured claimant asserted himself to be working as helper over the said JCB and his specific case is that, while he was giving directions to the driver - operator of JCB, the JCB was being driven and moved in rash and negligent manner and given dash to the claimant, as a result of which, he was injured and treated at various hospitals. He suffered 80% disability and thereby above claim was sought by invoking section 166 of Motor Vehicles Act, 1988.

3. Original Respondent no.1 owner of JCB vehicle vide written statement Exh.18 denied the case of claimant as well as liability, but he did not step into the witness box.

Original respondent nos.2 and 3 i.e present appellants filed say as well as written statement denying accident, dash, age, injury and disability.

After appreciating the evidence of claimant, medical expert, and an alleged eye witness and on perusing the medical papers, disability certificate, held present respondent no.1 original claimant to be entitled for compensation to the tune of Rs.7,44,186 under various heads with 8% rate of interest and learned tribunal was pleased to direct the insurance company to pay first and then to recover the same from original respondent no.1 driver and owner of the JCB.

It is the above judgment and order, which is questioned by insurance company on various grounds raised in appeal memo.

SUBMISSIONS

On behalf of Appellants – Insurance Company :

4. After considering the submissions advanced by learned counsel Mr. Malte, he seems to have questioned entitlement of compensation primarily on the ground of delayed FIR. Secondly, no

evidence about involvement of JCB in the alleged incident and rather medical papers suggesting self fall, and therefore, insurance company not even liable to pay and further recover. Specific ground is that, only driver- operator is permitted to work on Earth Mover like JCB and second person is not permitted to occupy and work on JCB, and therefore, claim itself seems to be false and ought to have been dismissed.

On behalf of respondent – original claimant :

5. On the other hand, learned counsel for original claimant would point out that, there is cogent and reliable evidence regarding injured to be working as a helper on the JCB. That, JCB driver operated and drove JCB in rash and negligent manner and gave dash to the helper. That, injured was initially taken to Rural Hospital. He was shifted to Private Hospital, Pusad and later on to Government Medical Hospital. That, injured was unconscious and only upon gaining consciousness, FIR has been lodged. Therefore, for above reasons, delay in reporting is not fatal. He further emphasized that, apart from medical witness, there is eye witness account and said eye witness has also stepped into witness box to depose what he saw that day and his evidence is at Exh.87. For above reasons, he justifies and support the impugned judgment and award and urges to not to disturb the sound findings. He seeks reliance on the decision of the Hon'ble Supreme Court in the cases of *Ravi v. Badrinarayan*, AIR 2011 SC 1226 and *Rama Bai v. M/s. Amit Minerals*,

Through In-charge Officer/Competent Officer & Anr. in Civil Appeal No.9669 of 2024 and *Amrit Paul Singh & Anr. v. TATA AIG General Insurance*, AIR 2018 SC 2662.

ANALYSIS

6. After analyzing the record and evidence, it is emerging that present respondent no.1 set up accident claim by invoking section 166 of M.V. Act by adducing his own evidence at Exh.25, evidence of medical expert (PW2) Exh.43 and an eye witness account at Exh.87. Apart from placing on record FIR, spot panchanama, disability certificate, respondent no.1 did not adduce either oral or documentary evidence. Original Respondent nos. 2 and 3 insurance company also did not adduce evidence, but placed on record written statement denying all assertions and claim by taking all possible statutory defence.

7. On going through the evidence of claimant at Exh.25, he reiterated that, on 30.04.2013, while he was working as helper on JCB and showing direction to JCB operator - driver, the vehicle was driven in high speed rash and negligent manner and he was given dash causing him grievous injuries. His evidence also shows that, he was initially taken to Rural hospital, Private Hospital, and Government Medical Hospital and subsequently taken to Global Hospital, Nanded. Medical paper like MRI is also placed on record.

8. PW2 Dr. Rahul Kamble, who is examined at Exh.43, has testified that while working as medical expert, he examined Nilesh Shankar Jadhav on account of accidental injury dated 30.04.2013. On injured getting admitted from 01.05.2013 to 12.05.2013 and on examination noticing “burst compression L1 vertebra fracture with avulsed posterior component of vertebra with traumatic paraplegia”, he also assessed percentage of permanent disability to the extent of 80% and he identified the said certificate.

9. Above witness is cross examined by learned counsel for insurance company, wherein he admitted that, there is Orthopedic Board at Government Hospital, Nanded; he is not member of the Orthopedic Board and he was not given authorization by Board to issue disability certificate. He admitted that, he examined patient on OPD basis, but denied that patient comes to OPD for treatment only. He admitted regarding not bringing OPD papers. He admitted that, there is no mention of medical record of patient in disability certificate. In paragraph 3 suggestion has been accepted that patient has undergone Neurology surgery, though he admitted that he is not Neurologist. He further denied to the suggestion that there was no fracture injury. He answered that he does not remember whether he had seen x-ray report as suggested by Dr.

Dabkekar. He admitted neurological injury should be issued by Neurologist. Rest is all denial.

10. Pointing to the above medical evidence, learned counsel for insurance company - appellants would submit that, PW2 Dr. Rahul Kamble has treated subsequently i.e. on 01.05.2013, whereas, alleged incident is of 30.04.2013 and Doctor of Rural Hospital is not examined and discharge summary showing history of self fall and therefore, according to him, there is no question of JCB being directly involved so as to fasten liability on insurance company, who allegedly insured the JCB.

11. On re-appreciating the evidence of claimant, and that of eye witness, who virtually supports and corroborates testimony of claimant, there is no reasons to disbelieve above evidence. Driver of JCB has merely denied involvement by placing written statement and without stepping into witness box. The manner of suggestions put by learned counsel for insurance company to the PW2 Dr. Kamble, clearly goes to show that, claimant had suffered injury and was being admitted and treated. Though attempt has been made to question Doctor by suggesting a case to be Neurological injury and he to be not authorized by Orthopedic Board to issue Disability Certificate, which in fact, is denied. In the considered opinion of this court, medical expert PW2 has deposed

about admission of complainant on account of accident injury and being treated noticing “burst compression L1 vertebra fracture with avulsed posterior component of vertebra with traumatic paraplegia”, disability certificate Exh.44 is also issued. Therefore, considering the object of legislation in accident claim cases, there is more than sufficient evidence to hold claimant to have suffered injury on account of dash by JCB. Independent eye witness account fortifies the case of claimant.

12. Another ground pressed into service by appellants - insurance company is that, there is delayed FIR, and therefore, it is concocted and fabricated to merely claim compensation. However, taking note of the fact that after the incident dated 30.04.2013, injured having been admitted and treated at two hospital, whatever delay has occurred in setting law into motion, can not become a hurdle in disbelieving the case of claimant. This court finds no force in the submissions about delayed and concocted FIR.

13. Learned counsel also made a faint attempt to assert dis-entitlement to receive compensation as alleged medical discharge certificate showing notice of history of self fall. It is common knowledge that information is passed on by persons accompanying injured and therefore it is possible that such information is noted in the discharge

summary. However, in the light of evidence of PW1 and PW2 treating and examining doctor above ground has no substance.

14. Perused the judgment under challenge. In the considered opinion of this court, all aspects are tested by learned tribunal and on strength of available evidence, claimant has been granted compensation. Order of pay and recover is just and proper. There is no infirmity or perversity so as to interfere. Hence, the following order is passed :

ORDER

- (i) The appeal is hereby dismissed.
- (ii) Pending Civil Applications, if any, stand disposed off.

(ABHAY S. WAGHWASE, J.)