

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.598 OF 2001

Kachru s/o. Mahipat Ghuge,
Age 26 years, occ.Nil,
R/o. Georai Shami,
Tq.Sillod, Dist. Aurangabad ..Appellant

Versus

- 1] The Secretary, M.S.R.T.C.,
Dr.Ababdrai Batar Marg,
Bombay through Divisional
controller, M.S.R.T.C.,
Aurangabad
- 2] Maroi s/o. Peeraji Gaikwad,
Age 31 years, occ. Service,
r/o. Wadur, Tq. Billoli,
dist. Nanded at present S.T.
Bus Depot, Sillod,
Dist.Aurangabad ..Respondents

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Mr.A.D.Kasliwal, advocate for appellant

Mrs.Ranjana Reddy, advocate for respondent no.1

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CORAM : M.T. JOSHI, J.

DATE : MARCH 02, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the rejection of the petition filed by present appellant, under Section 166 of the Motor Vehicles Act for grant of compensation, present appeal is filed.

3] The record would show that the collision had occurred between a Metador bearing registration no.MH-20-A-5524, which was driven by the present appellant, and a bus of Maharashtra State Road Transport Corporation (M.S.R.T.C.) on 27th January, 1993 at about 8:30 p.m. near Temple of Ganpati of village Aland. The present appellant claimed that the accident has occurred due to rash and negligent driving of the bus of M.S.R.T.C. and therefore, the compensation was claimed.

. As regards the compensation, it was claimed by the appellant that he has sustained injuries to his brain, head and there was fracture to his

right leg. He was, therefore, referred to Pune Medical Foundation's Ruby Hall Clinic and was required to incur Rs.15,000/-. He was advised bed rest. As he suffered serious injuries, he was not able to file the complaint. After discharge from the hospital, he forwarded the complaint to the Police station, Wadod Bazar, however, the police did not take any action. At the time of the accident, he was earning Rs.3,000/- per month. Due to permanent disability suffered by him, he was unable to work and therefore, a composite compensation of Rs.3,00,000/- was claimed.

4] The original respondent i.e. present respondent no.1 – M.S.R.T.C. and respondent no.2 – driver of the bus did not file any written statement. In fact, respondent no.2 continuously remained absent in the proceedings. The present appellant was cross-examined by learned counsel for respondent no.1 during the trial. The

documents collected/prepared by the police during investigation, like F.I.R., certified copy of the spot of occurrence as well as the documents regarding treatment and permanent disability certificate, were filed by the present appellant.

5] Learned Member, on the basis of the material, found that the complaint was, in fact, filed against the present appellant by the respondent no.2. The present appellant could not prove that the accident has occurred due to rash and negligent driving of the bus and therefore, the claim petition came to be dismissed. Hence, the present appeal.

6] Mr.Kasliwal, learned counsel for the appellant, submits that there was no positive evidence from the side of respondent no.1 or the respondent no.2. Merely because the F.I.R. was filed against the present appellant, learned

Member of the Tribunal concluded that present appellant has not proved the factum of rash and negligent driving of the bus. He submits that during pendency of the claim petition, the criminal case, which was filed against the present appellant, came to be concluded and he was acquitted in that case. The certified copy of that judgment was filed. In the circumstances, he submits that taking into consideration the recitals of the spot of occurrence, it can be concluded that the accident has occurred due to rash and negligent driving of the bus of M.S.R.T.C.

. As regard the quantum of compensation, Mr.Kasliwal submits that in view of the documentary evidence, necessary compensation may be granted.

7] On the other hand, Mrs.Reddy, learned counsel for respondent no.1, submits that in fact, the F.I.R. was filed against the present appellant himself and he could not prove that the accident has occurred due to rash and negligent driving of the bus. No Doctor was examined to show the nature of injuries.

8] On the basis of this material, following points arise for my determination :-

a] Whether the accident has occurred due to rash and negligent driving of the M.S.R.T.C. bus ?

b] Whether the appellant is entitled to compensation ? If yes, at what ratio ?

. My findings to point no.1 is that the accident has occurred due to contributory negligence of

present appellant and respondent no.2 – driver of M.S.R.T.C. bus. Therefore, the compensation will have to be awarded to the appellant in that proportion. The appeal is, therefore, partly allowed for the reasons to follow.

R E A S O N S

9] It should be noted that respondent no.2 – Maroti, bus driver, did neither contest the claim petition nor appeared in the present appeal throughout. Like present appellant, he was also an eye witness to the accident. No doubt, he has filed the F.I.R. against the present appellant. It should, however, be taken into consideration that the prosecution in that case has ended into acquittal of the present appellant.

. Learned Member has not taken into consideration the recitals in the panchnama of the

spot of occurrence Exhibit 23. It would show that the accident has occurred while both the vehicles were on the tar road, which was 30 feet wide. The driver's side of both the vehicles was smashed. In that view of the matter, in such cases, in absence of any evidence, when there is head-on collision, it is generally presumed that the accident has occurred due to rash and negligent driving of both the vehicles. In the present case, there is no hitch to come to the said conclusion in view of the certified copy of the spot of occurrence. Besides this, we have oral evidence from the side of the appellant. In that view of the matter, it will have to be held that the accident has occurred due to rash and negligent driving of both the vehicles.

10] As regards the issue of quantum of compensation, the admitted facts would show that the appellant was working as driver on the

metador. The Authorisation for Discharge issued by Ruby Hall Clinic (Exhibit 4) would show that the Doctor had found fracture to the scalp segment and fracture to the right femur and right tibia. It further shows that bone grafting was done and the appellant was admitted in the said hospital from 31st January, 1993 to 3rd March, 1993. The permanent disability certificate issued by the in-charge Orthopedic Surgeon of M.C.H. Aurangabad as well as Medical College, Aurangabad would show that due to fracture to the shaft femur and tibia, the appellant has suffered 16% of permanent disability. The appellant has filed below Exhibit 20 the list of the medical bills.

11] Mr.Reddy relies on the ratio laid down by Hon'ble Supreme Court in the case of **Raj Kumar Versus Ajay Kumar and anr., 2010 DGLS (Soft.) 2250** and particularly, paragraphs 12, 13 and 16 thereof, wherein, it was observed that if the

certificate regarding permanent disability issued by the doctors, who did not treat the injured, is to be accepted, caution should be taken. There are several instance of unscrupulous doctors who, without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding genuineness of such certificates.

12] In the present case, the discharge certificate Exhibit 24 is issued by Pune Medical Foundation's Ruby Hall Clinic, which is a reputed hospital. It would show that the appellant had suffered grievous injuries, as detailed supra. The permanent disability certificate at Exhibit 25 is issued by the Officers of Government Medical College and Hospital, Aurangabad. In the circumstances, merely because, no Medical Officer

was examined or no documents regarding initial admission of the appellant in the Government Hospital was filed, it cannot be said that the appellant has not proved the nature of injuries suffered by him or the permanent disability suffered by him. In that view of the matter as regards the quantum of the compensation, following factors are concerned :-

i] Medical expenses incurred by the appellant of Rs.1,50,000/- has been accepted by the Learned Member;

ii] Rs.30,000/- incurred towards transportation and special diet charges.

iii] Rs.9,000/- towards loss of earning for about three months.

13] The appellant, in cross-examination, has admitted that after recovery, he has continued in the profession of driver. In the circumstances, there would no loss of earnings. However, considering the fracture to shaft femur and tibia, there would certainly be loss of amenities. The discharge card would show that the appellant was 30 years old at the time of the accident. In the circumstances, the amount of Rs.30,000/-, towards loss of amenities would be reasonable. The total amount would come to Rs.2,19,000/- (Medical expenses of Rs.1,50,000/- + transportation and diet charges of Rs.30,000/- + loss of earning for three months Rs.9000/- + Rs.30,000/-). The appellant would be entitled for 50% i.e. Rs.1,09,500/- rounded to Rs.1,10,000/-. Considering the trend of the economy during the period of accident, as a mean, interest at the rate of 8% per annum from the date of filing of the petition till realisation needs to be granted.

14] Hence, the following order :-

A] The appeal is partly allowed with proportionate costs.

B] Respondent nos.1 and 2 are directed to pay to present appellant, jointly and severally, compensation amount of Rs.1,10,000/- with interest at the rate of 8% per annum from the date of filing of the petition i.e. 22th July, 1993, till realisation of the amount.

[M.T. JOSHI, J.]