

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 276 OF 2000
WITH
CA/4371/2000 IN FA/276/2000**

...

The Oriental Insurance Co. Ltd.,
through the Branch Manager,
Gurudwara Road, Nanded
By duly constituted Attorney,
Deepak Dattatraya Bhalerao,
age 46 years, Occ. Service, as
Divisional Manager,
The oriental Insurance Co. Ltd.,
Adalat Road, Aurangabad.

Appellant
[Orig resp No.2.]

VERSUS

1. Sharad s/o Narayanrao Naralkar,
age 40 years, Occ. Service,
with Texcom Textiles, Dhanegaon,
Tq. & Dist.Nanded.

Resp No.1/
orig. claimant.

2. The Managing Director,
Texcom Textiles, P.O. Box 26,
Dhanegaon, Tq. & Dist. Nanded.

Resp No.2./
orig resp no.1

...

Advocate for Appellant : Mr A A Joshi
Advocate for Respondent 1 : Mr V D Patnoorkar
Respondent No.2 Absent.

...

CORAM : V.K. JADHAV, J.

Dated: April 06, 2016

...

ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award

passed by the Member, Motor Accident Claims Tribunal Nanded in MACP No.281/1994, the original respondent no.2-insurer has preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as under :-

a] On 15.1.1994 the respondent-original claimant was riding his moped vehicle Bajaj M-80 bearing registration No.MH-26/1454. He was going to his office alongwith pillion rider Shri S.S.Deshpande. The respondent/original claimant is an employee of respondent No.1. On that day, while riding the said moped vehicle, when he reached near the office of Cidco at about 09.20 am, a staff transportation bus bearing registration No.7418 was going ahead of the petitioner's moped vehicle. There was crowd in front of the office of CIDCO as certain agitation was going on on account of the change in the name of Marathwada University. There was sort of unrest and tension in the said locality. At that time, driver of the bus apprehend that some untoward incident may occur and, therefore, suddenly the driver started taking the staff transportation Bus in

reverse direction, in consequence of which said staff bus gave dash to the moped of the respondent/claimant from backside. The claimant and pillion rider were thrown off the vehicle and sustained injuries. Thereafter, the claimant was shifted to the private hospital by his colleagues in the same staff vehicle and he was treated there as indoor patient for near about a month. Injuries sustained by him also resulted into permanent disability and, he also incurred medical expenses for the treatment. The Respondent-claimant has therefore, filed claim petition bearing No.281/1994 before the Motor Accident Claims Tribunal, Nanded. The learned Member, of the Motor Accident Claims Tribunal, Nanded by impugned Judgment and Award 17.6.2000 directed the respondents no.1 and 2 jointly and severally to pay Rs.25,000/- to the claimant alongwith interest from the date of petition till the realization of the amount. Being aggrieved by the same, the original respondent no.2 Insurer has preferred this appeal.

3. The learned counsel for the appellant-insurer

submits that, the claimant himself was negligent at the relevant time and, as such the accident had occurred. Learned counsel submits that, there is no evidence that said staff transportation bus was involved in the accident. Learned counsel submits that, after noticing the crowd in front of the Cidco office, the claimant started turning his moped vehicle without taking proper care and caution and moped vehicle skidded and therefore, he fell down on the road. Learned counsel submits that, as the claimant was in employment of the respondent no.1, out of humanity and sympathy some of the staff members immediately rendered help to him and took him to the private hospital. Learned counsel submits that the claimant by giving a false report manipulated false panchnama through the police agency. Learned counsel submits that, the Tribunal has not considered the same and, accordingly awarded the compensation to the claimant from the respondents.

4. Learned counsel for respondent-original claimant submits that, the claimant has examined himself on oath before the Tribunal and his evidence discloses that

the staff bus vehicle gave dash to his vehicle Bajaj M-80 and, as such, he was thrown on the ground. There is evidence that the claimant has, therefore, sustained injuries on his knee cap and accordingly incurred the medical expenses. Learned counsel submits that, the department had assured him to give compensation and as such, he did not approach the police immediately after the accident. Learned counsel submits that, there is nothing in his cross examination to dis-believe his version. Learned counsel submits that, the claimant has also examined one more witness who was the passenger in the said transportation vehicle. He has categorically deposed that, when the said staff transportation bus came in front of Cidco office, driver of the said bus abruptly applied the brakes and started taking the bus in reverse direction. He thereafter heard sound from the back side of the bus. He and other passengers in the staff bus alighted. The claimant Sharad was lying on the ground and was unable to stand up due to injuries sustained by him. Learned counsel submits that, the driver of the staff bus did not enter in witness box. Learned counsel submits that, the

original respondent no.1 examined another passenger of the said transportation bus, however, his evidence is not worthy of relying upon. Learned counsel submits that, said witness of respondent no.1 has exaggerated the story and described the incident in a different manner as pleaded by the respondent no.1. Learned counsel submits that, the claimant has submitted an application Exh.60 before the General Manager of respondent No.1 to grant him special medical leave alongwith the compensation towards medical expenses. His application was not rejected by respondent No.1. Learned counsel submits that, the Tribunal has considered all these facts and awarded just and reasonable compensation to the claimant. Learned counsel submits that, no interference is required and the appeal is thus liable to be dismissed with costs.

5. Learned counsel for respondent No.2 is absent.

6. It appears from the evidence that, the respondent/claimant has deposed about the manner in which accident had taken place and how he was thrown away

from his moped after receiving the dash of staff bus which abruptly started coming in reverse direction. In his cross examination, respondent-claimant has deposed that he tried to run away alongwith the vehicle when he saw the staff bus coming in reverse direction. Even considering the nature of the injuries sustained by the claimant, it is not possible that the claimant might have sustained the injuries when he started taking moped in another direction and in that event, his moped was skidded and he fell down on the ground. Oral evidence of PW 2 Tukaram PathaK has rightly appreciated by the learned Judge of the Tribunal. PW 2 Tukaram Pathak is an independent witness. He was travelling in the said transportation bus. His evidence appears to be natural, cogent and reliable. According to him, when the driver of the staff transportation bus came in front of the Cidco office, abruptly applied brakes and started taking staff bus in reverse direction. Even he had also heard sound of certain impact from the back side of the staff bus. He and other passengers when alighted from the bus saw that claimant Sharad was lying on the ground and and he was unable to

stand up due to injuries sustained by him. There is nothing in his cross examination to disbelieve his version. He is one of the staff member and he was travelling in the staff transportation bus in that capacity at the time of alleged incident.

7. So far as evidence of D.W.1 Arvind Tadwalkar is concerned, he has deposed that staff bus was stationary and the claimant had tried to over take the stationary bus from right side and when he reached near the Cidco office, as there was crowd the claimant could not control his vehicle, lost balance on his own and fell down and sustained injuries. The learned Judge of the Tribunal has rightly observed that, there is no pleadings to this effect by respondent no.1 that the claimant started overtaking staff bus and after seeing the crowd in front of the Cidco office, lost his balance from the running moped.

8. Thus, there is sufficient evidence on record to show that the accident had taken place in the manner as deposed by the claimant. There is evidence on record

to show that the claimant had sustained injuries and he remained as indoor patient between 15.1.1994 to 9.2.1994 in the hospital of Dr. Degloorkar. Even Exh.57 to 59 shows that the claimant availed leave for the said period on the ground of illness. The learned Judge of the Tribunal has considered entire evidence and thus awarded just and reasonable compensation to the claimant. I do not find any fault in the impugned Judgment and Award. There is no merit in the appeal. Hence, following order is passed.

O R D E R

- I. Appeal is accordingly dismissed with costs.
- II. In response to the order passed by this Court, the appellant has deposited entire amount before this Court.
- III. The respondent/original claimant is entitled to withdraw the said amount alongwith accrued interest during the pendency of appeal on it.
- IV. Appeal is accordingly disposed of.
- V. Pending civil application, if any, also stands disposed of.

sd/-

(V.K. JADHAV, J.)

aaa/-

.....