THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2549 OF 2009

1] M/S New India Assurance Co. Ltd.,
having its registered and Head Office at 87 M.G. Road New India Assurance Building Fort Mumbai 400 001 Branch Office at Parbhani and Division Office at Dr. Rajendra Prasad Road, Ajay Engg. Compound, Aurangabad-431 005 through it;s Senior Divisional Manager Mr. Vishwas Bansi Gaikwad 50 Years

2] Mayur Ramlandra Nayak,
age 35 years, Occ. Business,
Armane Building, K.C.Road, ANKOLA,
Dist. Uttar Karnataka.

… APPELLANTS
(ORIGINAL 2 & 1 RESPONDENTS)

VERSUS

Sanjay S/o Dattatraya Gaikwad,
Age 25 Years, Occu. Business,
R/o. Mali Galli, Parbhani.

… RESPONDENT
(ORIGINAL PETITIONER)

...

Mr. Vinayak Narayan Upadhye, Advocate for the Appellants.

Mr. K. M. Nagarkar, Advocate for the Respondent.

...

CORAM : **P. R. BORA, J.**

Reserved on : 08th August, 2016.

Pronounced on : 29th August,2016.

JUDGMENT:

. The Insurance Company has filed the present appeal against the judgment and award passed on 30th April, 2009, in Motor Accident Claim Petition No.334 of 2006, by the Motor Accident Claims Tribunal, at Parbhani (hereinafter referred to as "the Tribunal").

2 The aforesaid claim petition was filed by the Respondent seeking compensation under Section 166 of the Motor Vehicles Act on account of the damages caused to the vehicle i.e. luxury bus bearing registration No.MH-15-AK-0099, owned by him in a vehicular accident happened on 1st February, 2006. It was the contention of the Respondent before the Tribunal that on 1st February, 2006, the luxury bus owned by him when was required to be stopped because the tyre of the said luxury bus was punctured, a truck bearing registration No.KA-30-7134, insured with the Appellant – Insurance Company coming from the opposite direction, gave a dash to the said bus and caused heavy damages to the said bus. The Respondent, therefore, claimed the compensation amounting to Rs.4,00,000/-.

3 The claim petition so filed by the Respondent was resisted by the Appellant – Insurance Company on various grounds. It was the contention of the Appellant that there was no negligence on

the part of the driver of the truck in causing the alleged accident, but the same was caused because the luxury bus was stopped at the middle of the road without adhering to the Motor Vehicle Rules. It was the alternate submission of the Appellant – Insurance Company that the entire blame cannot be attributed on the part of the truck driver and the negligence on the part of the driver of the luxury bus was also a contributory factor for occurrence of the alleged accident. The survey report was also objected to by the Appellant – Insurance Company. The learned Tribunal after having assessed the oral and documentary evidence brought before it, awarded the compensation to the tune of Rs.2,24,250/- along with interest thereon at the rate of 9% per annum from the date of petition till realization of the said amount. Aggrieved by, the Insurance Company has preferred the present appeal.

4 Shri Upadhye, learned counsel for the Appellant submitted that the Tribunal has grossly erred in not considering the objections raised by the Insurance Company as about the contributory negligence on the part of the driver of the luxury bus in parking the same at the middle of the road and that too without following the Motor Vehicle Rules. The learned counsel taking me through the spot Panchanama pertaining to the alleged accident, submitted that it

clearly reflects that the luxury bus was standing at the middle of the road. The learned counsel further submitted that the accident had happened at the night hours and since the driver of the luxury bus had not taken precautions of keeping the parking lights on and the same was stopped at the middle of the road, the Tribunal must have held the driver of the luxury bus also responsible for occurrence of the alleged accident. The learned counsel further submitted that though the Surveyor in his testimony before the Tribunal has clearly stated that except the glass and window glasses all other parts mentioned in the assessment report were subject to 50% depreciation, the Tribunal has awarded the compensation of the whole amount as was indicated towards prices of the spare parts. The learned counsel, therefore, prayed for setting aside the impugned award and/or to adequately modify the said award by determining the amount of compensation taking into account the factor of contributory negligence on the part of the driver of the luxury bus and 50% depreciation in the value as per the price of spare parts.

5 Shri Nagarkar, learned counsel for the Respondent supported the impugned judgment and award. The learned counsel submitted that the luxury bus was not stopped at the middle of the road, but on the side of the road and all precautions were also taken

in observance of the Motor Vehicle Rules. The learned counsel submitted that the offending truck was coming from the opposite direction and it completely entered on the wrong side and gave a dash to the luxury bus to its front side and caused heavy damages to the luxury bus. The learned counsel further submitted that the Respondent has fully established that for occurrence of the alleged accident, negligence on the part of the truck driver was solely responsible. The learned counsel further submitted that the Tribunal had not committed any error in assessing the amount of compensation. According to the learned counsel, the Tribunal has on the contrary awarded less compensation than claimed by the Respondent. The learned counsel, therefore, prayed for dismissal of the appeal.

6 I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. I have also perused the impugned judgment as well as the evidence on record. As noted earlier, the award is challenged by the Insurance Company mainly on two grounds; first that the factor of contributory negligence has not been taken into account by the Tribunal and other that the value of the spare parts has been taken as it is by the Tribunal though according to the report of the Surveyor, the same was subject to 50%

depreciation except two items i.e. front glass and window glasses.

7 In so far as first objection is concerned, the same is liable to be rejected at the threshold in view of the fact that the spot Panchanama drawn in the matter clearly indicates that the luxury bus was not stopped or stationed at the middle of the road, but was at the side of the road and was dashed by the truck from its front side. From the situation on the spot, it is quite evident that the truck entered on wrong side and gave a dash to the luxury bus. In the circumstances, it does not appear to me that any error has been committed by the Tribunal in holding the driver of the truck wholly responsible for occurrence of the alleged accident.

8 In so far as other objection is concerned, the Insurance Company has relied upon the evidence of Vilas Chandan, Surveyor, who was examined by the Respondent / Claimant as his witness. According to the Appellant, the Surveyor in his cross-examination has unambiguously stated that the cost of the new spare parts, except the spare parts at serial Nos.1 and 42 i.e. glass and window glasses, other parts mentioned in the assessment report, was subject to 50% depreciation. In the circumstances, according to the Appellant, except the front glass and window glasses, the Tribunal must have awarded half of the price of the new spare parts by way of damages.

9 I have carefully perused the evidence of the Surveyor. On perusal of the evidence of the Surveyor and the survey report at Exhibit – 27 submitted by him, there appears some substance in the objection so raised by the Appellant – Insurance Company. As has been stated by the Surveyor, he has mentioned the cost of new spare parts in the report submitted by him. As further stated by him, except items at serial No.1 glass and serial No.42 window glasses, the other parts mentioned in his assessment report were subject to 50% depreciation. The window glasses are at serial No.43 and not at serial No.42. Deducting the costs of front glass and window glasses, which comes to Rs.12,000/- (8000 + 4000 = 12000), the costs of other spare parts comes to Rs.1,43,750/-.

10 Thus, according to the report of Surveyor and the evidence given by the said Surveyor before the Tribunal, the Claimant was entitled for half of the aforesaid amount of spare parts. It, however, appears to me that the Insurance Company was supposed to place on record some more evidence and some more explanation was necessary as about the criteria to be applied for taking into account the depreciated value of the spare parts. From the evidence, it is difficult to gather as to on what basis the depreciation is to be held at the rate of 50%. Further, it appears to me that in the report of

survey itself while determining the entitlement of the Claimant towards the value of the spare parts, depreciated value, for which according to the Surveyor the Claimant is entitled to, ought to have been mentioned. However, it cannot be denied that the Tribunal has failed in considering the aforesaid aspect and has thus erred in awarding the value of the spare parts as it is mentioned in the survey report ignoring the facts stated by the Surveyor that the costs of spare parts was subject to 50% depreciation. In the circumstances, there needs some modification in the impugned award. As I noted herein above, in absence of any concrete evidence as about the manner of calculating the depreciated value, I deem it appropriate to reduce the amount of compensation by Rs.50,000/- holding the Claimant entitled for the sum of Rs.1,05,750/- instead of Rs.1,55,750/- towards the value of spare parts. The Respondent is entitled for the sum of Rs. 73,500/- towards the labour charges as awarded by the learned Tribunal. Out of the aforesaid amount, the salvage value assessed to the tune of Rs. 5,000/- by the Tribunal will have to be deducted. The Respondent is thus held entitled for the total compensation amounting to Rs. 1,74,250/-.

11 The record reveals that the Appellant – Insurance Company has deposited the amount of Rs.2,85,456/- in this Court in

terms of the impugned award. It is further revealed that the Respondent was permitted to withdraw Rs.1,40,000/- of the said amount. In view of the fact that the Respondent is now held entitled for the total compensation of Rs.1,74,250/- instead of Rs.2,24,250/-, he will be entitled to withdraw that much of amount along with interest accrued thereon from the deposited amount and the balance amount will have to be refunded to the Appellant – Insurance Company. Hence, the following order:

O R D E R

I. The Appeal is partly allowed.

II. The Respondent is held entitled for the total compensation amount to Rs.1,74,250/- along with interest thereon at the rate of 9% from the date of petition till deposit of the said amount by the Insurance Company in this Court.

III. Accordingly, from the deposited amount of compensation, the amount payable to the Respondent be paid to the Respondent and the balance amount be refunded to the Appellant – Insurance Company.

IV. Modified award be prepared accordingly.

sd/-
[P. R. BORA, J.]

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