

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.282 OF 2006

Ram S/o. Keshavrao Kanhe
Age: 35 years, Occu: Service,
R/o. Near Shivaji Statue,
Parbhani, Tal. & Dist. Parbhani

...APPELLANT
(Ori. Petitioner)

VERSUS

Maharashtra State Road Transport
Corporation Through Its Divisional
Manager, M.S.R.T.C., Gangakhed Rd.
Parbhani, Tal. & Dist. Parbhani

...RESPONDENT
(Ori. Respondent)

...
Mr. S.B. Ghatol Patil, Advocate for appellant;
Mr. Anand D. Wange, Advocate for Respondent sole.

...

CORAM: P.R. BORA, J.

DATE : 02/08/2017

ORAL JUDGMENT:

1. Heard finally with the consent of learned Counsel appearing for the parties.

2. The appellant has filed the present appeal seeking enhancement in the amount of damages awarded by the Motor Accident Claims Tribunal, Parbhani, in M.A.C.P.No.342/2003 decided on 19th of November, 2005.

3. The Tribunal has assessed the damages to the tune

of Rs.5,000/- and holding the appellant responsible for occurrence of the alleged accident in equal proportion, has held the State Transport Corporation liable to pay 50 per cent of the said amount i.e. Rs.2500/- to the appellant with interest at the rate of 8 per cent per annum.

4. The appellant was the owner of Maruti Car and it was damaged in the alleged accident. It was the case of the appellant that the S.T. Bus gave dash to the Maruti car and in the accident so happened the Maruti Car was extensively damaged. It was the contention of the appellant that the alleged accident had happened because of the sole negligence of the S.T. Driver. The appellant had claimed damages to the tune of Rs.1,00,000/-. In order to prove his claim, the appellant himself deposed before the Court and also examined Government approved valuer / surveyor.

5. On its assessment of the oral and documentary evidence brought on record, the Tribunal held the accident to have been caused because of composite negligence of drivers of both the vehicles and holding the applicant appellant also responsible in equal proportion, held the S.T. Corporation liable to pay 50 per cent of the assessed damages. The Tribunal

assessed the damages to the tune of Rs.5,000/- and as noted hereinabove, made the S.T. Corporation liable to pay 50 per cent of the same i.e. Rs.2500/-.

6. Shri Ghatol Patil, learned counsel for the appellant, submitted that the Tribunal has grossly erred in not considering the expert evidence placed on record by the appellant. Learned counsel further submitted that the amount of damages has been assessed by the learned Tribunal on the basis of the Police panchnama. Learned Counsel, taking me through the evidence of the surveyor, submitted that the appellant has sufficiently proved the damages to the extent of Rs.61,000/- and, as such, he was entitled to be awarded whole of the said amount. Learned Counsel further submitted that there was no evidence to show negligence on the part of the appellant, however, the Tribunal, merely because it was head on collision accident, held the appellant also equally responsible for occurrence of the alleged accident. Learned Counsel, therefore, prayed for allowing the appeal and for consequent directions to pay the entire amount of damages which may be enhanced by this Court in its entirety from the respondent Corporation.

7. Shri Wange, learned Counsel appearing for respondent Corporation, supported the impugned judgment and award. Learned counsel submitted that in so far as the negligence aspect is concerned, the situation on the spot clearly demonstrates that it was a head on collision accident and, as such, no error can be noticed in the finding recorded by the Tribunal that the alleged accident happened because of negligence on the part of drivers of both the vehicles in equal proportion. Learned counsel further submitted that the appellant / applicant did not produce on record a single bill evidencing the expenses made by him. In the circumstances, according to the learned Counsel, the Tribunal was left with no other option except to rely upon the damages as were assessed in the Police Panchnama. Learned Counsel submitted that no interference is warranted in the impugned judgment and award. He, therefore, prayed for dismissal of the appeal.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for respective parties. I have perused the impugned judgment and the evidence on record.

9. In so far as the aspect of negligence is concerned,

though it was sought to be canvassed by the learned Counsel for the appellant that the alleged accident had happened because of the sole negligence on the part of the S.T. Driver, I am not convinced with the submission so made. I need not to make elaborate discussion; suffice it to say that since it was head on collision accident and so also as the situation on the spot indicates that in occurrence of the alleged accident, drivers of both the vehicles were equally negligent, I do not see any reason to interfere in the finding of the Tribunal on the aspect of negligence.

10. In so far as determination of the damages is concerned, apparently, the impugned judgment cannot be sustained. The Tribunal has erred in assessing the damages relying on the averments in the Police Panchnama. The Police is not the expert to assess the damages of the vehicle. It is not the case that there was no evidence adduced by the appellant / applicant. I have gone through the evidence of Vilas R.Chandan, the approved valuer. Loss assessment report, indicating total loss of Rs.60,187/-, was duly proved through his evidence. It is also true that the appellant applicant did not produce on record any bill to substantiate the expenses incurred by him. Though it was sought to be canvassed by

the learned Counsel that, by that time, the appellant had not repaired the vehicle for lack of money and was waiting for his claim to be considered by the Maharashtra State Road Transport Corporation, the submission cannot be accepted. No such case seems to have been made out by the appellant before the Tribunal. However, merely for that reason, the entire claim of the applicant could not have been rejected by the Tribunal. From the material on record, it can be gathered that the appellant had purchased the said Maruti Car for a price of Rs.60,000/-. Though no sufficient material is available on record so as to indicate the depreciated value of the said car, some guess work can be done and damages can be assessed. Perusal of the loss assessment report reveals that the valuer has not given allowance of the parts to be replaced at their depreciated value. The salvage is stated to be of Rs.4,000/-. It ought to have been deducted from the amount of Rs.60,000/- while assessing the figure of total damages. Considering these two aspects, it appears to me that the damages caused to the vehicle can be safely assessed to the tune of Rs.40,000/-.

11. Having regard to the fact that the appellant is also held equally responsible in causing the accident, the liability on

the S.T. Corporation is to pay half of the said amount. I, therefore, hold the State Transport Corporation liable to pay damages to the tune of Rs.20,000/- to the appellant applicant in total. The award to be modified accordingly. It is clarified that the appellant will be entitled for the interest at the rate of 8 per cent on the said amount from the date of filing of the application till its realization.

. The Appeal stands partly allowed in the aforesaid terms. Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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AGP/282-06FA