

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1183 OF 2004

Shri. Bhalchandra S/o Dhondopant Raikhelkar,
Age:- 65 yrs., Occ: Agril., R/o: Raikhel,
Tq. Tuljapur, Dist. Osmanabad.

... APPELLANT
(Original Claimant)

VERSUS

Maharashtra State Road Transport
Corporation, through the Divisional
Controller, Osmanabad Division,
Osmanabad.

... RESPONDENT
(Original Opponent)

...

Mr. M. M. Patil (Beedkar), Advocate for the Appellant.

Mr. A. B. Dhongade, Advocate for the Respondent.

...

CORAM : **V. K. JADHAV, J.**
DATE : 22nd February, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by
the learned Member of Motor Accident Claims Tribunal, Osmanabad
dated 2nd April, 2004 in MACP No.108 of 1998, the original Claimant
has preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

- a) On 10th February, 1997, the Appellant / Claimant was travelling in S.T. Bus bearing registration No.MH-20-D-2566 from Latur to Parbhani. On that day at about 23:30 hours, on Latur – Parbhani State Highway within the limits of village Dadahari Wadgaon, one vehicle came from the opposite side and dashed against the S.T. Bus. In consequence of which, the Appellant / Claimant has sustained injuries on his right leg and other part of the body. After the accident, he was immediately shifted to the General Hospital at Parli and therefrom to the General Hospital at Ambajogai. He was also shifted to Suyash Nursing Hospital, Solapur, where he has undergone the operation on his right leg. He remained as an indoor patient for about a month and thereafter, taken the follow up treatment in the said Suyash Hospital. Further, the injuries sustained by him on his right leg also resulted into the permanent disablement to the extent of 32.5%.

He also suffered from shortening of his right leg and restriction of the movements of his knee joint. The Appellant / Claimant has therefore, approached the Tribunal by filing MACP No.108 of 1998 for grant of compensation under the various heads. It has contended in the claim petition that the accident had taken place on account of rash and negligent driving of the driver of the S.T. Bus. The Appellant / Claimant incurred huge medical expenses and also incurred expenses on special diet etc. He has also sustained the loss in the agricultural income.

- b) Respondent / MSRTC has strongly resisted the petition by filing the written statement Exhibit – 11. It has denied that the accident occurred on account of rash and negligent driving of the driver of S.T. Bus. It has contended that near the spot of accident, one unknown tempo came in high speed from the opposite direction and gave dash to the right side of the bus. It has therefore, contended that the accident occurred due to the rash and

negligent driving of the driver of the said unknown tempo and there was no fault on the part of the driver of the S.T. Bus.

- c) The Appellant / Claimant has examined himself on oath and further relied upon the documents such as FIR, spot Panchanama etc. and also placed on record the hospital bills and the cash memos of the medicines purchased by him during the course of treatment. The Respondent / MSRTC has not adduced any evidence. The learned Member of the Motor Accident Claims Tribunal, Osmanabad vide its impugned judgment and award dated 2nd April, 2004 dismissed the application mainly on the ground that the Appellant / Claimant has failed to prove that the accident occurred on account of the rash and negligent driving of the driver of the S.T. Bus. Hence, this appeal.

3 The learned counsel for the Appellant / Claimant submits that the Appellant / Claimant was travelling in the bus as a passenger

and the accident had taken place in the night time. It was the responsibility of the driver of the S.T. Bus to drive the vehicle like bus carrying passengers with due care and caution. The learned counsel submits that the Appellant / Claimant has approached the Tribunal with a specific pleading and evidence in support that the accident had taken place on account of rash and negligent driving of the driver of the S.T. Bus. The Respondent / MSRTC has also not denied the happening of the accident. The Respondent / MSRTC has resisted the claim on the ground that one unknown tempo coming from the opposite direction gave dash to the S.T. Bus and the driver of the tempo is entirely responsible for the accident. The learned counsel submits that the Appellant / Claimant has proved the happening of the accident and thus, the burden shifts on the Respondent / MSRTC by application of maxim *res ipsa loquitur* to prove that the driver of the S.T. Bus was not rash and negligent in driving the S.T. Bus at the time of accident. However, the Respondent / MSRTC has not examined the driver of the said S.T. Bus and thus, failed to discharge the burden. The learned counsel submits that on the other hand, on perusal of the contents of spot Panchanama, an irresistible inference could be drawn that the vehicle S.T. Bus was being driven in a fast

speed and the driver of the S.T. Bus has not taken due care and caution while driving the S.T. Bus carrying the passengers in the night time. The learned counsel submits that the driver of the S.T. Bus is thus, responsible for the accident and the Tribunal should have recorded the findings about the rash and negligent driving of the driver of the S.T. Bus.

4 The learned counsel for the Appellant submits that the injuries sustained by the Appellant / Claimant resulted into permanent disablement to the extent of 32.5% as certified by the orthopedic surgeon. The said certificate Exhibit – 19 is issued by the treating doctor. The Appellant / Claimant has deposed before the Court that after the accident, he had taken the treatment in Suyash Nursing Hospital, Solapur. The doctor of the said hospital namely Dr. Pramod Deshmukh has issued the said certificate, who happened to be a consulting orthopedic doctor. The Appellant / Claimant is suffering from shortening of right lower limb and there is 75% restriction of his right knee movement and further pain and deformity of right knee to the extent of 6%. The Claimant has permanent disablement as certified by orthopedic surgeon to the extent of 32.5%. The learned counsel submits that after the retirement, the Appellant / Claimant was

looking after his agricultural land personally and on account of the aforesaid permanent disablement, he is not in a position to look after his land. Consequently, there is loss in the agricultural income. The learned counsel submits that the Appellant / Claimant is entitled for the compensation for the permanent disablement, for pains and sufferings, special die, incidental charges, loss of amenities in future life and also medical expenses incurred.

5 The learned counsel for the Respondent / MSRTC submits that after the accident, the driver of the S.T. Bus has lodged the complaint in the concerned police station and the same is produced before the Court. The FIR marked as Exhibit – 20 and the complaint is as Exhibit – 21. Those documents are filed by the Appellant / Claimant and the contents thereof can be read in evidence. The learned counsel submits that it has specifically stated in the complaint that one unknown vehicle tempo came from the opposite direction in a fast speed and gave dash to the S.T. Bus. The driver of the said temp had driven the said tempo in rash and negligent manner and caused the accident. He is reasonable for the accident entirely. The learned counsel submits that the Appellant / Claimant has failed to prove that the driver of the S.T. Bus has driven

the vehicle S.T. Bus in rash and negligent manner and caused the accident. The learned Member of the Tribunal has therefore, rightly recorded the finding to that effect and accordingly dismissed the claim petition. No interference is required.

6 The learned counsel for the Respondent / MSRTC submits that the Appellant / Claimant is a retired person and in case if this Court comes to the conclusion about the rash and negligent driving on the part of the driver of the S.T. Bus, then the Appellant / Claimant is not entitled for any compensation under the head of loss of future income. There is no evidence that the Appellant / Claimant owned and possessed the agricultural land and as such, there is no question of considering the loss in the agricultural income. The learned counsel submits that the Appellant / Claimant has failed to prove the medical expenses.

7 On careful perusal of the pleadings and the oral and documentary evidence led by the Appellant / Claimant, it appears that the Appellant / Claimant was travelling in the aforesaid S.T. Bus as a passenger. On Latur – Parbhani State Highway, the said S.T. Bus met with an accident. Respondent / MSRTC has also not denied the

happening of the accident because after the accident, the complaint was lodged by the driver of the S.T. Bus himself. Thus, the Claimant has proved the happening of the accident. By application of maxim *res ipsa loquitur* the burden shifts on the Respondent / MSRTC to prove that the accident had not taken place on account of rash and negligent driving on the part of the driver of the S.T. Bus. Respondent / MSRTC has not examined the driver of the S.T. Bus to substantiate the contentions raised by way of pleadings. On careful perusal of the spot Panchanama Exhibit – 22, it appears that the road at the spot of accident is 18 feet in width having the mud pan of 4 feet in width at both the sides of the road. It further appears from the contents of spot Panchanama that the spot of the accident is on the tar road. There were no brake marks of S.T. Bus. The S.T. Bus found damaged entirely from the right side i.e. driver side. It has noted specifically in the spot Panchanama that right from the seat behind the driver seat, the damage is caused to the S.T. Bus till the last seat of the S.T. Bus. Thus, only inference could be drawn that at the time of accident, the driver of the S.T. Bus has driven the bus in excessive speed without taking due care and caution. It was the duty of the driver of the S.T. Bus to drive the bus with due care and caution when passengers were

being carried in the said bus. Furthermore, the Appellant / Claimant on oath has stated before the Tribunal that the accident had taken place on account of rash and negligent driving of the driver of the S.T. Bus alone. The learned Member of the Tribunal has not considered the oral evidence and the contents of spot Panchanama Exhibit – 22. The learned Member of the Tribunal has not considered that Respondent / MSRTC has not examined the driver of the S.T. Bus to substantiate its contention that accident had taken place on account of rash and negligent driving of the driver of the unknown tempo. By application of *res ipsa loquitur* the burden shifts on the Respondent / MSRTC to prove the same and the said burden is not at all discharged. The Tribunal ought to have recorded the finding to that effect that the accident had taken place on account of the rash and negligent driving of the driver of the S.T. Bus and not by any other way. I accordingly, hold that Claimant has proved that on 10th February, 1997 at about 23:30 hours, on State Highway towards 10 kilometers near village Dadahari Wadgaon, the Appellant / Claimant sustained the injuries in the accident involving the S.T. Bus bearing registration No.MH-20-D-2566 on account of rash and negligent driving of the driver of the S.T. Bus.

8 So far as the quantum of compensation is concerned, there is no evidence at all on record to show that the Appellant / Claimant owned and possessed the agricultural land and on account of the injuries sustained by him he incurred the loss in the agricultural income.

9 The Appellant / Claimant has deposed that after the accident, he had taken treatment in the Suyash Nursing Hospital, Solapur. Medical certificate issued by Dr. Pramod Deshmukh, who is a consulting orthopedic surgeon in Suyash Nursing Hospital is placed on record and marked as Exhibit – 19. The Respondent / MSRTC has not disputed the genuineness of the said certificate. The same is also evident from the fact that Respondent / MSRTC has not raised any objection even though the Tribunal has exhibited the said certificate. On careful perusal of the said certificate, it appears that Dr. Pramod Deshmukh has recorded his opinion that the Appellant / Claimant has 75% of restriction of his right knee movement and has accordingly calculated the permanent disablement to the extent of 32.5%. Dr. Pramod Deshmukh has also observed the shortening of right lower limb to the extent of 4 inch and the pain and deformity of

right knee and thigh to the extent of 6%. Though the said certificate Exhibit – 19 is not in the prescribed form of Comp. Form 'B', orthopedic surgeon Dr. Pramod Deshmukh has mentioned the disability in detail and worked out the disablement separately. The Appellant / Claimant has sustained shortening of right lower limb to the extent of 4 inch. The Appellant / Claimant has deposed that he undergone the operations and treated in various hospitals for a considerable period. The Appellant / Claimant was 60 years of age at the time of accident. The Appellant / Claimant has not only suffered from permanent disablement, but also suffered from the pains and also the loss of amenities in his remaining span of life. He has also incurred the medical expenses and expenses on special diet and incidental expenses. The Appellant / Claimant is certainly entitled for the same.

10 In view of the disablement certificate Exhibit – 19 and the consequences of the said permanent disablement, the Appellant / Claimant is entitled for an amount of Rs.1,00,000/- on this count. The Appellant / Claimant is entitled for an amount of Rs.25,000/- for pains and sufferings. He is also entitled for an amount of Rs.10,000/- towards special diet and Rs.5,000/- as incidental expenses. The

Appellant / Claimant is also entitled for an amount of Rs.20,000/- for loss of amenities in future life. The Appellant / Claimant has placed before the Tribunal alongwith list Exhibit – 4 the medical bills 82 in number. The said bills are the printed bills signed on revenue receipts indicating about the payment received as mentioned under the bills. There are cash memos of the medicines purchased by the Appellant / Claimant time to time as prescribed to him. The Appellant / Claimant is entitled for an amount of Rs.40,000/- towards the medical expenses.

11 Thus, the break up of compensation under the different heads, which can be broadly categorized as under:

Sr. No.	Particulars of the head	Amount in Rupees
1)	Towards permanent disablement	Rs.1,00,000/-
2)	Towards medical expenses	Rs.40,000/-
3)	Towards pains and sufferings	Rs.25,000/-
4)	Towards special diet	Rs.10,000/-
5)	Towards incidental expenses	Rs.5,000/-
6)	Towards loss of amenities in future life	Rs.20,000/-
	Total =	Rs.2,00,000/-

12 Thus, the Appellant / Claimant is entitled for the total amount of compensation as worked out hereinbefore. Hence, the

following order:

ORDER

- I. The appeal, is hereby allowed with costs.
- II. The judgment and award passed by the Member of Motor Accident Claims Tribunal, Osmanabad dated 2nd April, 2004 in MACP No.108 of 1998, is hereby quashed and set aside.
- III. Motor Accident Claim Petition No.108 of 1998, is hereby allowed with costs.
- IV. The Respondent / MSRTC do pay an amount of Rs.2,00,000/- (Rupees Two Lacs only) to the Claimant inclusive of the amount under no fault liability alongwith interest @7.5% per annum from the date of application till realization of the entire amount.
- V. Award be drawn up accordingly.
- VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]