

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

FIRST APPEAL NO. 4188 OF 2016
WITH
CIVIL APPLICATION NO.15320 OF 2016
IN FA/4188/2016
WITH
CIVIL APPLICATION NO.1711 OF 2017
IN FA/4188/2016

THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION.

VERSUS
CHINTAMANI BHALCHANDRA KODAM

...

CORAM: V.K. JADHAV, J.

DATE :- 03rd April, 2017

Per Court:

- 1 Heard finally at admission stage, with consent of the parties.
- 2 Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar dated 21.06.2016 in Motor Accident Claim Petition No.72/2011, the Appellant/ original Respondent MSRTC has preferred this appeal.
- 3 Brief facts giving rising to the present appeal are as follows:-
 - (a) On 13.12.2010, the Claimant along with his brother Girish

was proceeding from Sarjepura to DSP Chowk, Ahmednagar on the motorcycle. His brother Girish was riding the motorcycle and he was pillion rider. At about 10:00 am, one ST Bus bearing registration No.MH-12-EF-6248, which was proceeding towards Aurangabad side in speed, had given dash to the said motorcycle on its backside. In consequence of which, the claimant has sustained injuries on his right leg and other parts of the body. The injuries sustained by the claimant resulted into amputation of his right leg below knee. The claimant has incurred huge medical expenses.

(b) The claimant has, therefore, approached the Motor Accident Claims Tribunal by filing MACP No.72/2011 for grant of compensation under the various heads. It has been contended in the claim petition that the driver of the ST Bus had driven the Bus in rash and negligent manner and caused the accident. The claimant has sustained the injuries which resulted into permanent disability to the extent of 70% in the form of amputation of his right leg below knee. The claimant was studying in 11th science at the time of accident and thus, he has lost his future prospects.

(c) The Appellant/ MSRTC has strongly resisted the claim petition by filing the Written Statement. It has been contended that the driver of the ST Bus was driving the said Bus from the correct side of the road. The rider of the motorcycle, on which the claimant was pillion rider, has tried to overtake the ST Bus from the wrong side of the ST Bus. Thus,

the rider of the motorcycle could not control his motorcycle and dashed against the front side passenger door of the ST Bus. It has been contended that the rider of the motorcycle alone was responsible and the driver of the ST Bus was not at fault.

(d) The claimant and the Appellant/ MSRTC have adduced the evidence in support of their contentions.

(e) The learned Member of the Tribunal has allowed the claim petition and thereby, directed the Appellant/ MSRTC to pay the compensation of Rs.15,49,276/- to the claimant inclusive of NFL amount along with interest at the rate of 9% per annum from the date of the application till realization of the entire amount.

(f) Aggrieved by the same, the original Respondent/ MSRTC has preferred this Appeal.

4 The learned counsel for the Appellant/ MSRTC submits that the Appellant/ MSRTC has examined the driver and conductor of the ST Bus involved in the accident. The rider of the motorcycle was trying to overtake the said Bus from the wrong side. The learned counsel submits that one another vehicle was trying to overtake the ST Bus from the correct side and in order to give side to the said vehicle, the driver of the ST Bus took the said Bus towards left side and in that process, the rider of the motorcycle, which is involved in the accident, gave dash to the front

side passenger door of the ST Bus. The learned counsel submits that the learned Member of the Tribunal has not considered the defence raised by the Appellant/ MSRTC and has erroneously discarded the evidence of the driver and conductor of the said Bus.

5 The learned counsel for the Appellant/ MSRTC submits that the learned Member of the Tribunal has awarded an exorbitant amount of compensation. The learned counsel submits that the witness Dr.Pokharna has admitted in his cross-examination that the percentage of the disablement of 70%, as mentioned in the Disability Certificate Exhibit-41, is in respect of the whole body of the claimant. The learned Member of the Tribunal has, however, not considered the same and erroneously awarded the compensation by taking the said percentage of disablement as a criteria, affecting the earning capacity of the claimant. The learned counsel submits that even though the Tribunal has awarded the amount of Rs.2 lac towards pains and sufferings, again awarded Rs.2 lac for mental sufferings along with loss of marriage prospects of the claimant.

6 The learned counsel for the Respondent/ original claimant submits that the motorcycle on which the claimant was driving as a pillion rider, was proceeding ahead of the said ST Bus at the time of accident. The said ST Bus has given dash on the backside of the motorcycle and thus,

the accident has taken place. The learned counsel submits that the Appellant/ MSRTC has raised the said plea after thought and even the conductor of the said ST Bus has admitted in his cross-examination that no such incident was reported in the office of the MSRTC. The learned counsel submits that on perusal of the Spot Panchanama Exhibit-26, no damage to the conductor side passenger door of the ST Bus was noticed. On the other hand, it has been specifically recorded in the Spot Panchanama Exhibit-26 that the motorcycle was lying in between the front wheels of the ST Bus. The learned counsel submits that the driver of the ST Bus has deposed that the said motorcycle has given dash to the conductor side passenger door and as such, the accident has taken place. However, the witness conductor has deposed that the motorcycle slipped on it's own and thus, the accident has taken place. The learned Member of the Tribunal has, therefore, rightly held that the accident has taken place on account of fault of the driver of the ST Bus alone and the rider of the motorcycle was not at fault.

7 The learned counsel for the Respondent/ original claimant submits that the claimant was taking education in 11th Science and as such, on account of amputation of his right leg, he has lost his future prospects. The learned counsel submits that the learned Member of the Tribunal has considered the monthly income of the claimant at Rs.3000/-

per month and added Rs.1210/- towards his future prospects. The learned Member of the Tribunal has, therefore, rightly considered the loss of future income. Though the Tribunal has awarded Rs.2 lac for pains and sufferings, however, awarded further amount of compensation of Rs.2 lac for loss of marriage prospects. The learned counsel submits that these two heads are separate heads and the Tribunal has awarded just and reasonable compensation. The learned counsel submits that the Tribunal has not awarded the compensation for conveyance, attendant charges, etc.. However, the claimant has not preferred any cross objection. The Tribunal has awarded just and reasonable compensation and hence, no interference is required.

8 On careful perusal of the pleadings, evidence and the judgment and award passed by the learned Member of the Tribunal, it appears that the claimant has approached the Tribunal with a specific pleading that the motorcycle, on which he was riding as a pillion rider, was proceeding ahead of the ST Bus at the time of accident and the said ST Bus has given dash to his motorcycle on its backside. The claimant has also filed his affidavit of evidence and contended in the said affidavit that at the time of accident, the ST Bus was in uncontrollable speed and the said Bus has given dash on the backside of the motorcycle.

9 The Appellant/ MSRTC has examined its driver, who has deposed that the said motorcycle was trying to overtake the ST Bus from the wrong side. At that time, one another vehicle coming from the backside, was trying to overtake the said ST Bus. Thus, he has taken the ST Bus towards the left side of the road. He was driving his Bus in slow speed. According to him, the said motorcycle, which was overtaking his Bus from the wrong side, gave dash to the front passenger door of the ST Bus.

10 On careful perusal of the contents of the Spot Panchanama Exhibit-26, the damage to the front passenger door of the ST Bus was not noticed. On the other hand, it has been specifically mentioned in the Spot Panchanama that the said motorcycle was lying in between the middle portion of the front wheels of the said ST Bus. Further, the brake marks to the extent of 15 feet behind the rear wheels of the ST Bus, also noticed in the contents of the Spot Panchanama. If the evidence of the driver of the ST Bus is accepted, then, there should have been damage caused to the front passenger door of the ST Bus. Further, there is no reason that after the accident, the said motorcycle, which allegedly gave dash to the front passenger door of the ST Bus, to come in between the front wheels of the ST Bus in any manner. Further more, if for giving side to the another vehicle, which was overtaking the ST Bus, the driver of the ST Bus has

taken his Bus towards his left side, then, there is hardly any possibility of applying the brakes. Thus, the only inference could be drawn that the motorcycle on which the claimant was travelling as a pillion rider, was proceeding ahead of the ST Bus and the driver of the ST Bus could not control the speed of the Bus even after applying the brakes and thus, the said ST Bus has given dash to the motorcycle on its backside.

11 The Appellant/ MSRTC has examined witness No.2 Suresh Tambe, conductor of the said Bus. He has brought altogether different story. According to him, the rider of the said motorcycle was trying to overtake the ST Bus from the wrong side and in that process, the said motorcycle slipped. The witness No.2 Suresh has not stated anything about the dash given by the motorcycle on the front passenger door of the ST Bus. Even he has admitted in his cross-examination that during the course of investigation, his statement was not recorded by the Police. Admittedly, the crime came to be registered against the driver of the ST Bus alone and the driver and conductor of the ST Bus have not filed any complaint against the rider of the motorcycle, nor reported the incident to the Appellant/ MSRTC. The learned Member of the Tribunal has, therefore, rightly recorded the finding on Issue No.2 in the affirmative and held that the accident has taken place on account of rash and negligent driving of the driver of the ST Bus alone.

12 Insofar as the quantum of compensation is concerned, the witness Dr.Pokharna has issued the Permanent Disability Certificate (Exhibit-41) wherein he has specifically mentioned the amputation below knee and the total permanent disability is to the extent of 70%. The witness Dr.Pokharna is M.S. Ortho and he is treating doctor. After the accident, the claimant has taken treatment in his hospital. The witness Dr.Pokharna has found right compound and crush tibia fibula fracture with loss of neuro vascular structures. He has admitted in his cross-examination that the disability as mentioned in the Certificate Exhibit-41 is 70% and it is not with respect to any particular limb, but it is in respect of whole body. He assessed disability on the basis of the guidelines issued by the Government. Though he was referred the Schedule of the Workmen Compensation Act, the learned counsel for the Appellant/ MSRTC has failed to convince me as to how the witness Dr.Pokharna has recorded the wrong percentage of the permanent disablement in his certificate Exhibit-41. Even referring the Schedule-I Par-2 of the Workmen Compensation Act, 1923, the witness Dr.Pokharna has rightly recorded the percentage of disablement on account of amputation of the right leg of the claimant.

13 Though the learned Member of the Tribunal has considered at the lower side the monthly income of the claimant at Rs.3000/- per month

and further rightly added Rs.1210/- towards his future prospects. Tribunal has also awarded the medical expenses incurred by the claimant and also certain amount towards the recurring future medical expenses. The learned Member of the Tribunal has also awarded the compensation separately under the non-pecuniary heads such as pains and sufferings and loss of marriage prospects. I do not find any fault in the same. There is no substance in the appeal. The First Appeal is, thus, liable to be dismissed.

14 Thus, the following order:-

- (a) The First Appeal is hereby dismissed with costs.
- (b) The First Appeal is, accordingly, disposed of.
- (c) Needless to state, if the compensation amount is deposited in this Court, the claimant is permitted to withdraw the same.
- (d) The pending Civil Applications are also disposed of.

(V.K. JADHAV, J.)