

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 822 OF 2015

DNYNESHWAR SADASHIV BHURKE
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION THR
DIVISIONAL CONTROLLER PARBHANI

...
Advocate for Appellant : Mr. Sachin S. Deshmukh
Advocate for Respondents : Mr. A.D. Wange
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CORAM : V. K. JADHAV, J.
DATED : 8th FEBRUARY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 16.7.2013 passed by learned Member, M.A.C.T. Hingoli, in M.A.C.P. No. 230 of 2007, the original claimant has preferred this appeal to the extent of quantum.
2. The appellant claimant has sustained injury in the accident which took place on 22.2.2007 on Nanded-Hingoli road, near Tondapur Phata, which resulted into permanent disablement. The appellant claimant preferred M.A.C.P. No. 230 of 2007 for grant of compensation under various heads against M.S.R.T.C. with allegations that the driver of S.T. bus had driven the said S.T. bus, bearing registration No. MH-40/8268 in rash and negligent manner and caused the accident. The respondent M.S.R.T.C. has strongly resisted the claim petition on the ground that the driver of S.T. bus had not driven the S.T. bus in rash and negligent

manner and the rider of motor cycle was entirely at fault. Both the parties led their oral as well as documentary evidence in support of their rival contentions.

The learned Member of the Tribunal, partly allowed the claim petition and thereby directed respondent M.S.R.T.C. to pay an amount of Rs.1,86,500/- with proportionate costs, inclusive of 'no fault liability' with interest @ 7.5% p.a. from the date of petition till realization of entire amount. The learned Member of the Tribunal has recorded a finding that the appellant claimant had contributed negligence to the extent of 40% and accordingly worked out the compensation. Being aggrieved by the finding to the extent of negligence contributed by the appellant-claimant, this appeal is preferred.

3. Learned counsel for the appellant submits that the appellant was coming from approach road Tondapur and at that time, said S.T. bus was coming from Nanded in speed and it was going towards Hingoli. The driver of S.T. bus had driven the vehicle in rash and negligent manner and gave dash to the motor cycle. Respondent M.S.R.T.C. has examined its driver, who has deposed contrary to the pleadings of M.S.R.T.C. Respondent M.S.R.T.C. has come with a specific pleading that motor cycle gave dash to the back portion of S.T. bus, whereas the driver of S.T. bus has deposed that the Motor cycle came from approach road of Tondapur in speed and it was slipped near the bus.

He has further deposed that he was not at fault and rider of motor cycle sustained injuries, as the motor cycle came to be slipped near S.T. bus. The rider of the motor cycle fallen down on the road and sustained injuries. Learned counsel submits that evidence contrary to the pleadings cannot be considered and even then the learned Member of the Tribunal has considered the negligence on the part of appellant claimant to the extent of 40% in the accident.

4. Learned counsel for respondent M.S.R.T.C. submits that on perusal of contents of spot panchnama Exh.31 and the map drawn on it, it is clear that rider of motor cycle, though approaching to main road i.e. Nanded Hingoli road, he did not wait till the main road gets cleared. Even though the S.T. bus was taken to extreme side of the road, the motor cycle gave dash to the middle portion of S.T. bus. As per the map drawn on spot panchnama, the spot of incident shown on middle portion of the road. Learned counsel submits that considering the pleadings, evidence, contents of the spot panchnama and map drawn on it, learned Member of Tribunal has rightly considered the negligence on the part of rider of motor cycle to the extent of 40%. No interference is required.

5. On careful perusal of spot panchnama Exh.31 and map drawn on it, it appears that Nanded-Hingoli road is south-north in direction and admittedly the S.T. bus had come from Nanded i.e. from south side and

it was proceeding towards Hingoli i.e. to north side. The said approach road i.e. Tondapur road is towards western side of the road. It further appears from the map drawn and the spot panchnama that accident took place at the middle portion of the road and also at the point of approach road. Further, it is also clear from the map drawn on spot panchnama that S.T. bus was towards eastern side of the road. It is thus clear that the rider of motor cycle had also driven the vehicle in rash and negligent manner. However, the driver of S.T. bus had also driven the vehicle S.T. bus in speed and in rash and negligent manner and consequently, he could not control the bus even noticing the motor cycle approaching the main road. Considering the size of vehicle and the fact that a dash is given to the left side middle portion of S.T. bus, it would be just and appropriate to conclude that the appellant claimant had contributed the negligence to the extent of 30% whereas the driver of S.T. bus had contributed the negligence to the extent of 70%.

6. Thus, the break up of compensation under different heads awardable to the appellant-claimant, which can be broadly categorized is as under:-

I)	Loss of future income	- Rs.2,59,200.00
II)	Medical expenses	- Rs. 41,500.00
III)	Loss of actual income and special diet, pains and sufferings	- Rs. 10,250.00

	Total	Rs.3,10,950.00
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The appellant-claimant is entitled for compensation to the extent of 70% of the aforesaid amount i.e. Rs.2,17,665.00 (Rupees Two lacs seventeen thousand six hundred sixty five only) as per the negligence contributed by the driver of the S.T. bus. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 16.7.2013, passed by the learned Member, M.A.C.T. Hingoli, in M.A.C.P. No. 230 of 2007, is hereby modified in the following manner:-

“The respondent do pay an amount of Rs.2,17,665/- (Rupees Two lacs seventeen thousand six hundred sixty five only) inclusive of 'no fault liability' amount alongwith interest @ 7.5% p.a. from the date of petition till realization of entire amount.
- III. The rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per above modification.
- V. First appeal is disposed of accordingly.

(V. K. JADHAV, J.)