

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

FIRST APPEAL NO. 4134 OF 2016

The Divisional Controller,
Maharashtra State Road Transport
Corporation, MSRTC,
Division- Ahmednagar,
District Ahmednagar

.. **APPELLANT**
(original Opponent)

VERSUS

Kiran Laxman Chabukswar,
Age: 40 years, occupation -Nil
R/O : Burudgaon Road, Near Chanakya
Hotel Chabukswar Chawl, Ahmednagar,
Dist. Ahmednagar.

.. **RESPONDENTS**
(original Applicant)

..
Mr. B.S. Deshmukh, Advocate for appellant.
Mrs. M.D. Thube-Mhase, Advocate for respondent
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 6th NOVEMBER, 2017.

PRONOUNCED ON : 19th DECEMBER, 2017.

JUDGMENT :-

1. The appellant - Maharashtra State Road Transport Corporation, (for short "MSRTC") has preferred present appeal under section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") and put in question the judgment and award dated 08-06-2016 passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar (for short "Tribunal") in Motor Accident Claim Petition No. 855 of 2011.

2. Factual matrix of the matter in brief is that, on 31-08-2011 in wee hours of the evening at about 6.00 to 6.30 p.m. respondent-herein - original claimant accompanied with his maternal uncle Shri Bhinagardive were proceeding on the road near premise of hotel "Yash Palace". When they were crossing the Ahmednagar-Pune Highway Road, the vehicle S.T. Bus bearing registration No. MH-12/EF-6826 of the appellant - MSRTC arrived speedily and knocked down the claimant, due to which he sprawled on the ground. The driver of S.T. Bus was rash and negligent, while driving the vehicle. The claimant sustained serious fracture injuries to his knee. He was immediately escorted to the hospital for medical treatment. The medical expert examined him and opined that claimant received *intera articular fracture of right tibia*. The claimant was operated twice for his knee injuries. He was hospitalized for considerable period. The claimant incurred sum of Rs. 1,75,000/- towards medical expenses. According to claimant, he was 35 years old and indulged in the profession as an driver. He was getting salary of Rs.6000/- per month with Rs.100/- Bhatta per day, but due to injury sustained to his knee, he could not perform his duty as driver. He claimed Rs. 5,00,000/- as an compensation for loss of income due to his permanent physical disability.

3. The appellant - MSRTC appeared in the claim proceeding filed before Tribunal and resisted the claim by written statement (Exhibit-10). The appellant denied about occurrence of such incident of accident resulting into fracture injuries to the claimant. According to appellant, alleged vehicle S.T. Bus has no concerned at all with the injuries sustained to the claimant, but he filed claim petition against the

appellant -MSRTC with malafide intention to get compensation.

4. Learned Tribunal framed the requisite issues for adjudication of the claim petition on merit. The claimant examined himself on oath. He has also adduced evidence of P.W. 2-Dr. Muley and P.W. 3 Shri Daware, his employer. The claimant also produced voluminous documents comprising police reports, document of medical treatment, hospital bills etc on record. In defiance, the appellant - MSRTC adduced evidence of its driver Shri Balu Aute. He has produced the document of control chart as well as document of medical entry by police of Kotwali Police Station. The Tribunal appreciated oral and circumstantial evidence adduced on record and concluded that the vehicle of the appellant - MSRTC has an involvement in the alleged accident resulting into fracture injuries to claimant. The driver drove the S.T. Bus at the relevant time in very rash and negligent manner. Therefore, Tribunal partly allowed the claim petition and directed the appellant MSRTC to pay compensation of Rs.3,32,700/- to the claimant. Being dissatisfied with the findings of Tribunal, appellant - MSRTC rushed to this Court and filed the present appeal.

5. Having heard learned counsel for the appellant and learned counsel for respondent-original claimant, also delved into record and proceedings of the claim petition. The question that arises for deliberation in this case is only, as to "Whether, the vehicle S.T. Bus of the appellant -MSRTC has an involvement in the alleged accident resulting into causing physical disability to respondent-original claimant?"

6. Intense scrutiny of evidence produced on record reflects that argument canvassed on behalf of appellant-MSRTC appears not sustainable and considerable one. The findings of the Tribunal cannot be characterized as perverse and unjustified in this case.

7. It is true that in criminal proceeding STC No. 560 of 2011 lodged against driver of the S.T. Bus in question, the learned Magistrate, Ahmednagar by judgment dated 08-05-2013 concluded that prosecution has failed to prove the alleged involvement of vehicle S.T. Bus in question, in the accident causing injuries to the claimant. The prosecution did not succeed to prove the charges against the driver of the S.T. Bus in the criminal court. But, failure of prosecution in the criminal court would not be the sole decisive factor to arrive at the conclusion that incident of accident involving S.T. Bus in question never occurred at any point of time on the fateful day. It cannot be ignored that reliance would not be kept on the decision of criminal case, as one binding in the civil action. The proceeding of claim under section 166 of the Act of 1988 is of summary civil proceeding in nature, wherein the claimant is required to prove rash and negligent driving of the vehicle by independent evidence. Therefore, mere acquittal of the driver cannot be considered as an sole basis to absolve the appellant -MSRTC from the liability to pay compensation for the injuries sustained to claimant.

8. The law is well settled that, in claim under the Motor Vehicles Act, 1988, the evidence should not be scrutinized in the manner as is done in civil suit or criminal proceeding. In civil cases rule is,

'preponderance of probabilities' and in criminal cases rule is, *'proof beyond reasonable doubt'*. It is not necessary to consider these niceties in the matter of accident claim. Nodoubt, the nature of proceeding in motor accident claim is of summary enquiry. If there is some evidence available on record to arrive at the findings then such kind of evidence would be sufficient for Tribunal in deciding the proceeding of motor accident claim.

9. The claimant examined himself before the Tribunal and explained the circumstances in which the accident occurred. He has categorically described that S.T. Bus of the appellant - MSRTC came speedily and knocked down him when he was attempted to cross the road. He sprawled on the ground and sustained fracture injuries. He had seen that driver of the offending vehicle did not stop the vehicle and went away. Thereafter, he was immediately escorted to the hospital of P.W. 2 -Dr. Muley being medico legal case of road accident. The hospital authority has given information about the accident to the concerned Police. Accordingly, police visited to the claimant in the hospital and recorded his First Information Report (for short "FIR") against the Bus driver. The claimant also given registration number of the vehicle involved in the accident to the Police. The driver of S.T. Bus produced the document at (Exhibit 14/1) with caption as "दवाखाना नोंद". The document pertains to medical entry by the police of Kotwali Police Station reflects the cause of accident as knocked down by the Bus ("बसने उडविले"). Since beginning the claimant was clamouring that the S.T. Bus proceeding towards Pune side gave dash to him. He has also given the S. T. Bus number in his FIR, which he came to know from the

witnesses who watched the spectacle of the alleged accident.

10. Admittedly, the claimant on the fateful day of incident i.e. on 31-08-2011 in wee hours of evening met with an vehicular accident. He received fracture injuries to his knee. He was immediately taken to the hospital being road accident case. P.W. 2 Dr. Muley stated about the same in his evidence before the Tribunal. Pursuant to FIR of the claimant, an offence came to be registered against the driver of the S.T. Bus. Investigating Officer carried out the investigation and filed the charge-sheet against driver of the S. T. Bus in question. These circumstances adumbrates involvement of S.T. Bus of appellant - MSRTC in the incident of mishap As referred supra, the prosecution did not succeed to prove the criminal charges against the driver of the offending vehicle, but it does not mean that vehicle S.T. Bus has no involvement in the alleged accident.

11. Learned counsel for the appellant harped on the circumstances that FIR came to be lodged at belated stage, after about two days of the incident. Therefore, he cast the allegation that involvement of the vehicle S.T. Bus in this case would be after thought, doubtful and suspicious one. It is worth to mention that the nature of claim petition is summary civil proceeding and the claimant has to establish rash and negligent driving of the driver of offending vehicle by independent evidence. The delay in lodging the FIR or non-registration of the Police case by the police at the earliest does not give rise to any adverse inference that no such incident of motor accident occurred. It is not unusual for Medical Officer of the Hospital in not reporting the medico

legal case promptly to the Police. Moreover, now a days, the witnesses of the incident are less prone to get themselves involved in the police cases to avoid further mental and physical harassment. However, if the circumstances on record otherwise, established, the claim from other acceptable evidence, the delay in lodging the FIR would not cause any dent to allow the claim for compensation.

12. In instant case, the claimant himself was an eye witness of the alleged incident. He narrated the episode in detail resulting into fracture injuries to his lower limbs. P.W. 2- Dr. Muley, medically treated the claimant in his hospital as an road accident case. He performed the surgery twice for his alleged fracture injuries to his knee. The Medical Expert opined that the fracture to the knee of the claimant would cause 30% permanent disability to right lower limb of claimant. Medical experts further added that it would difficult for the claimant to bend his knee fully due to arthritis. Moreover, he could not squat and it would cause difficulty for him to drive the vehicle. Therefore, there is sufficient proof enough to affirm the findings of the Tribunal that S.T. Bus of the appellant - MSRTC had an involvement in the alleged accident occurred on 31-08-2011. The The driver of the S. T. Bus in question was rash and negligent while driving the vehicle. The quantum of compensation determined by the Tribunal appears to be just, proper and reasonable one.

13. Learned counsel for the appellant - MSRTC made abortive attempt to dislodge the claim of the claimant on the ground that at the relevant time of accident at about 6.30 p.m., the alleged S.T. Bus of

the MSRTC was at Malidwada Bus stand Ahmednagar, which was half k.m away from the spot of accident. The driver produced the document of traffic control chart maintained by the Controller of Maliwada Bus stand, Ahmednagar. There was an entry in the chart about the departure of S.T. Bus in question at about 6.30 p.m. from the Maliwada Bus stand. Therefore, he asserted that it would difficult for the S.T. Bus to reach at the spot at 6.30 p.m. According to him, the vehicle S.T. Bus has no concerned at all with the alleged accident occurred at 6.30 p.m. as stated by claimant. As a matter of fact, though driver of the S.T. Bus deposed before the Tribunal and made a reference of document of control chart, but it cannot be ignored that the spot of incident was hardly at a distance of half k.m. away from Maliwada Bus stand. The possibility of arrival of S.T. Bus in question on the spot of accident at the marginal time could not be ruled out. The claimant in his evidence stated that the accident took place at about 6.00 to 6.30 p.m. The claimant stated the timing of the occurrence of incident at about 6.00 to 6.30 p.m. not accurately but in approximate manner. In such circumstances it is fallacious to conclude that the S. T. Bus in question has no involvement into the alleged accident. It is preposterous to give much more significance to the accurate timings of occurrence of the accident in between 6.00 to 6.30 p.m in this case.

14. In the above premise, the close scrutiny of the evidence adduced on record would disclose that the vehicle S. T. Bus of the appellant has an involvement in the accident occurred at the relevant time. The vehicle knocked down the respondent-claimant resulting to serious fracture injuries to his left lower limb. The driver of the vehicle was

driving the vehicle S. T. Bus in rash and negligent manner. Therefore, there is no impediment to conclude that the applicant claimant proved that he received the permanent physical infirmity in the vehicular accident, due to rash and negligent driving of the vehicle S. T. Bus, by its driver. There is no necessity to cause any interference in the findings expressed by the learned Tribunal.

15. In the result, in view of the aforesaid discussion, the appeal stands dismissed. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
