

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

FIRST APPEAL NO. 754 OF 2002

Uttamlal s/o Harilal Toshniwal
age 58 yrs occ. Business,
c/o Vijaykumar Dube r/o Kej
Tq. Kej Dist. Beed.

..Appellant

Versus

1. The General Manager,
M.S.R.T.C. Wahatuk Bhawan
Bombay Central, Bombay.
2. The Divisional Manager,
M.S.R.T.C. Beed.
3. The Divisional Manager,
New India Assurance Company,
Adalat Road, P.B. No.311,
Aurangabad.

..Respondents

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Mr. V.V. Bhavthankar, Advocate for the Appellant.
Mr. A.B. Dhongade, Advocate for Respondent No.2.

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CORAM : P.R. BORA, J.

DATE : 25th OCTOBER, 2018.

ORAL JUDGMENT:-

1. The original claimant in Motor Accident Claim Petition No. 78 of 1992 has preferred the present appeal seeking enhancement in the amount of damages/compensation awarded by the Motor Accident Claim Tribunal at Aurangabad in the aforesaid petition decided on 10.03.2000. The appellant is hereinafter referred to as "the claimant".

2. The vehicle i.e. a jeep owned by the

appellant was damaged in a vehicular accident happened on 12.07.1991. According to the case of the claimant, the jeep was dashed by M.S.R.T.C bus and was extensively damaged. It was the contention of the claimant that he spent the amount of Rs. 1,00,000/- on the repairs of his jeep and he was therefore entitled for the entire said amount. It was also the contention of the claimant that since he was deprived from using the said jeep for the period of two months, he was also entitled for the damages for the said period. In order to substantiate the claims so raised by him, the claimant himself deposed before the Tribunal and also examined four other witnesses to prove the expenses incurred by him on repair of jeep. The respondent-M.S.R.T.C had disputed and denied the claim of the claimants. However, no evidence was adduced on behalf of the M.S.R.T.C.

3. The learned Tribunal after having assessed the oral and documentary evidence brought on record before it, held the claimant entitled for the total compensation of Rs. 32,134/-. Aggrieved by, the present appeal is preferred by the

claimant.

4. Shri Bhavthankar, the learned counsel appearing for the appellant-claimant submitted that each and every bill produced on record was duly proved by the claimant by examining the shop owner or representative of the shop owner. The learned counsel submitted that nothing has been brought in the cross-examination of said witnesses so as to disbelieve their testimonies. In the circumstances, according to the learned counsel, the entire amount as was proved to have been spent by the claimant must have been awarded by the Tribunal. The learned counsel submitted that the Tribunal has manifestly erred in not awarding some of the bills amount by using its own knowledge or on guess that the said bills may not be genuine. The learned counsel further submitted that the Tribunal has also erred in not awarding the damages for the period of two months during which the jeep was admittedly out of use. On these grounds, the learned counsel has sought enhancement in the amount of compensation.

5. Shri Dhongade, the learned counsel

appearing for the respondent-M.S.R.T.C supported the impugned judgment and award. The learned counsel invited my attention to the discussion made by the Tribunal in Para 11 of the judgment and submitted that the Tribunal has assigned the reasons for not awarding the bills which were of the period post 28.09.1991 on the day on which the possession of the vehicle was handed over to the claimant after the same repair. The learned counsel submitted that a well reasoned judgment has been passed by the Tribunal and no interference is required in the judgment and award so passed.

6. I have given due consideration to the submissions made by the learned counsel for the parties. I have also perused the impugned judgment and the evidence on record. As was rightly pointed out by the learned counsel for the respondent-M.S.R.T.C, Para 11 is relevant in so far as the objections are raised by the claimant in exception to the impugned judgment. I deem it appropriate to reproduce the entire said Para 11 which reads thus:

"11. It is to be mentioned here that bills ex.33/1 to 33/4 by CW4-Sunil Hinganikar of Janata automobiles, are for

entire repairs including colouring and cushioning of ill fated jeep by replacing every part byu 16/8/1991. There was thus no reason obvious for the claimant to take jeep thereafter on 20/8/91 to Mahendra CW2 Atmaram CW3 either for repairs or purchase of spare parts. It was never a case of the claimant either in his petition or in his evidence that spare parts which were not available at Janata automobiles, were required to be purchased by him from Mahendra CW2 and Atmaram CW3. There is also no whisper either in his petition or in his evidence that prior to taking jeep to Janta automobiles he had to purchase spare parts from CW2 Mahendra and CW3 Atmaram of which cash memos exh.29/1 to 29/9 & exh 31/1 & 31/2 were issued by them, to him after making payment on 20/8/91. The claimant thus can hardly be awarded damages against exh.31/1, 31/2 and exh.29/1 to 29/9. At the most he can be awarded against three cash memos ex. 29/1, 29/2 & 31/1 those being dt.16/8/91 and 3/8/91 for Rs. 3067/, Rs. 750/-, and Rs. 10,842/- respectively."

7. In light of the discussion made by the Tribunal in the aforesaid Para, when I perused the bills which are not allowed by the Tribunal, for the reasons stated in the aforesaid Para, it is

revealed that some of the bills were certainly liable to be allowed even if the discussion made by the Tribunal is held to be correctly made. Some such parts were purchased vide the said bills which could have been fixed after the entire cushioning work etc., is completed. More particularly, the expenses incurred vide Exh.29/9 worth Rs. 3,766/- are concerned, there was no reason for disallowing the said amount to the claimant. The other bills, it appears to me that were rightly refused by the Tribunal.

8. The another objection which has been raised by Shri Bhavthankar is as about not awarding any amount towards non-use of vehicle for the period of two months, the claimant had claimed the amount of Rs. 2,000/- per month for two months i.e in total Rs.4,000/- were claimed. No evidence was infact required to prove that the jeep was not in use and the claimant was deprived from using the said jeep for the period of two months wherein, the said jeep was under repair. The Tribunal in the circumstances, must have allowed the said claim of the claimant. The Tribunal has committed an error in rejecting the said claim made by the claimant.

I, therefore, held the appellant entitled for the aforesaid amount also.

9. Save and except the aforesaid two aspects, it does not appears to me that any more enhancement is possible in the amount of compensation so awarded. I, therefore, held the appellant entitled for the enhanced amount of compensation to the extent of Rs. 7766/-. Hence, the following order:

ORDER

- i) The appellant is held entitled for the enhanced amount of compensation for Rs. Rs.7766/-.
- ii) The respondent-corporation shall pay the aforesaid amount to the claimant with interest thereon at the rate of 9% p.a. from the date of filing of the appeal till its realization.
- iii) The appeal thus stands partly allowed.
- iv) Pending civil applications, if any, stands disposed of.

(P.R. BORA, J.)