

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

FIRST APPEAL NO. 1548 OF 2017

Anurath s/o Limbaji Bhang,
age 35 years, occ. Agril.,
R/o Shivam Nagar, Parbhani,
Tq. and Dist. Parbhani

...Appellant
[Orig. claimant]

VERSUS

Maharashtra State Road
Transport Corporation,
Through its Divisional
Controller, Gangakhed Road,
Parbhani, Tq. & Dist. Parbhani

...Respondent
[Orig. Respondent]

...

Mr. P.N.Kalani, advocate for Appellant
Mr. A.D.Wange, advocate for sole respondent

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 21.9.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 26.9.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal, Parbhani, in Motor Accident Claim Petition No. 381 of 2012. Appellant is original

claimant and respondent is the Maharashtra State Road Transport Corporation (hereinafter referred to as 'the Corporation').

2. The Tribunal awarded compensation of Rs.1,00,000/- on account of damages sustained by jeep No. MH-21/C-1136, owned by the claimant, which met with the accident with the Corporation bus No. MH-20/D-9930 on 12.7.2011. This appeal is only for enhancement of compensation.

3. Heard Shri P.N.Kalani, learned counsel for the appellant and Shri A.D.Wange, learned counsel for respondent/Corporation.

4. Learned counsel for the appellant submits that the Tribunal, ignoring the expert evidence of surveyor, who assessed damages sustained by jeep of the claimant to the tune of Rs.3,32,440/-, awarded meager compensation to the claimant. He placed reliance on Survey report Exh.29 and oral evidence of Surveyor Mr. Sanjay Yadwadkar (PW 2).

5. Learned counsel for the respondent supported the judgment, passed by the Tribunal on the ground that the damaged jeep is also transferred to third person before filing of this claim petition. He submits that no bills of payment regarding purchase of spare parts are proved by the claimant, and therefore, the Trial Court rightly discarded the evidence of Surveyor PW 2, who is a private person.

6. In the wake of these rival contentions, short point for my consideration is, whether the damages assessed by Surveyor PW 2 are acceptable or not ?

7. After going through the testimony of Shri Sanjay Yadwadkar (PW 2), who is Government approved Surveyor and who is authorized to carry out survey of the damaged vehicle and assess the loss, it emerges that the authority of this witness as Government approved surveyor is not at all disputed by the respondent. No counter survey report assessing actual damages sustained by jeep involved

in the accident is filed and proved by the respondent. Learned counsel mainly relies on the recitals of spot panchanama regarding damages to the jeep to the tune of Rs.80,000/-. However, it is suffice to say that the police and panchas, who prepared spot panchanama of the damaged vehicle, are not the expert in damage assessment of vehicle. Therefore, importance cannot be given to the opinion expressed by police in the panchanama of the vehicle.

8. On the other hand, Sanjay (PW 2) is Government approved surveyor and he is expert in survey of damaged vehicle and assessment of damages to the vehicle.

9. After going through the evidence of this witness, it emerges that he has categorically deposed regarding all details of the survey carried out by him of the damaged jeep and assessment of damages to the extent of Rs.3,32,440/-. This witness has duly proved survey assessment report Exh.29.

10. The Tribunal ignored the evidence of expert surveyor PW 2 merely on the ground that the petitioner did not produce and prove the bills of the spare parts purchased for the purpose of repairs. However, the reason assigned by the Tribunal for rejecting the evidence of expert surveyor are not at all acceptable, because the Surveyor PW 2 has to only assess the extent of damages to the jeep and he need not verify whether spare parts were purchased by the concerned mechanic or not. On the other hand, after going through the survey report Exh.29, it is evident that the surveyor, in his report, has given description of each and every damaged spare parts. From this report, it emerges that about 84 spare parts of the jeep involved in the accident were totally damaged. While assessing the approximate damages to the jeep, the surveyor has also considered the depreciation in the price of the spare parts. The survey report also includes the approximate labour charges which would be required to be paid for repairs of the vehicle. Though total damages of the vehicle were assessed at

Rs.6,08,650/-, after considering the depreciation, the surveyor has opined that the loss to the jeep is assessed at Rs.3,32,440/-. He has clearly opined that the said jeep is near to total loss. His opinion is not a blunt statement but it is also supported by various photographs of the damaged vehicle, which clearly indicate that the total jeep was damaged in the accident in between the jeep and the Corporation bus.

11. After going through the evidence of Surveyor PW 2 and survey report Exh.29, I am fully satisfied that the evidence of Surveyor PW 2 and survey report Exh.29 can be relied upon to hold that the petitioner sustained damages of Rs.3,32,440/- as opined by the surveyor. Only because the jeep is sold out to third person, that does not absolve the respondent/Corporation to pay damages to the claimant, as the transfer of vehicle has no relevance with the right of claimant to recover damages from the respondent/Corporation. It follows that this appeal deserves to be allowed.

12. Accordingly, the appeal is allowed. It is held that the appellant/claimant is entitled to recover the damages of Rs.3,32,440/- from the respondent/Corporation with interest thereon at the rate of nine per cent per annum from the date of petition till realization of this amount. The award passed by the Tribunal be modified accordingly. Parties to bear their own costs.

[SUNIL K.KOTWAL, J.]

dbm