

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.839 OF 2004

Shaikh Saddam Shaikh Salim
Age : 11 years, Occ : Education
Minor under guardianship of father
Shaikh Salim Shaikh Jama
Age : 40 years, Occ : Labour,
R/o Sirsala, Tq. Parli-Vaijnath,
Dist. Beed.

.. APPELLANT
(Ori. Claimant)

VERSUS

Maharashtra State Road Transport
Through its Divisional Controller
Dist. Beed.

.. RESPONDENT
(ORIGINAL RESPONDENT)

...
Mr.S.S. Dargad a/w Mr.S.G. Chapalgaonkar,
Advocates for the appellant.
Mr.A.B. Dhongade, Advocate for the respondent

...
CORAM : V.L.ACHLIYA,J.

RESERVED ON : 23.01.2020
PRONOUNCED ON:24.07.2020

JUDGMENT:

. Being aggrieved by the judgment and
award dated 02.12.2003 passed by the Member,
Motor Accident Claims Tribunal, Ambajogai in
M.A.C.P. No.53/2001, the appellant (original

claimant) has preferred this appeal.

2. Heard learned counsel for the appellant and learned counsel representing respondent. Perused the record and proceedings.

3. For the sake of brevity and convenience, the parties to appeal are referred as they are referred in the judgment of the Tribunal.

4. The appellant-claimant had preferred application U/Sec. 166 of the Motor Vehicle Act, 1988 (Hereinafter referred to as "the M.V. Act") seeking compensation of Rs.1,00,000/- on account of accidental injury resulting into permanent disablement caused to claimant in an accident occurred on 03.12.2000 near Bus Stand of village Sirsala, Tq. Parali Vaijnath, Dist. Beed. The claimant

has approached with a case that on the date of accident, the claimant was proceeding by the side of the road with a bicycle in his hand. While he was proceeding by the side of road, the offending vehicle i.e. S.T. Bus bearing registration No.MH-20/D-0535 owned by the respondent came in an excessive speed. While taking turn towards Bus Stand, the wheel of Bus passed over the leg of the appellant, which resulted into causing crush injury to the right toe and two fingers. Initially, the appellant-claimant was taken to Primary Health Centre at Sirsala. Considering the seriousness of injury, the appellant was referred to S.R.T.M. Medical College and Hospital at Ambajogai. He was treated in said Hospital as a indoor patient for 50 days. Due to the accidental injury, the appellant sustained permanent disablement to extent of 40%. The appellant has claimed the compensation of Rs.1,00,000/- with

contention that the accident was occurred due to sole negligence and absolute fault on the part of driver of offending bus, which was owned by respondent.

5. The respondent contested the claim with contention that the accident was occurred due to sole negligence on the part of appellant. The respondent has claimed that at the time of accident, the driver of the offending Bus was proceeding towards Sirsala Bus Stand. While driver was proceeding with bus to Sirsala Bus Stand and passing in front of Janemiya Chicken Center, the claimant, who was riding the bicycle came from front side. He could not control his bicycle and fell down to the left side of Bus. Due to this reason, the right leg of the claimant came under the front left side wheel of Bus, which resulted into causing injuries to his fingers of right leg. Immediately after the incident

driver and conductor of the Bus admitted the injured claimant in the Hospital. No damage caused to the bus as well as bicycle of injured which itself demonstrates that the accident was occurred due to absolute fault on the part of the claimant.

6. In order to prove the case of the claimant, the father of the claimant stepped into witness box and deposed as per the case of the claimant. He has categorically deposed that in the accident, the claimant had suffered crush injury to his right leg and the wheel of the Bus run over the right leg of the claimant. The claimant was treated in SRTM Medical College and Hospital, Ambajogai. He was required to undergo treatment for 2 years. Due to amputation of right foot, the claimant is unable to walk. He is not in a position to properly sit and get up. The respondent has examined Sudhakar Shete

[D.W.1], the driver of Bus.

7. On due consideration of oral and documentary evidence adduced in the case, the Tribunal has dismissed the claim application filed U/Sec. 166 of M.V. Act by holding that the claimant is not entitled for compensation other than compensation Rs.25,000/- awarded U/Sec. 140 of the M.V. Act. Being aggrieved, the appellant-claimant has preferred this appeal.

8. Learned counsel for the appellant assailed the reasons and findings recorded by the Tribunal with contention that the Tribunal has grossly erred in appreciating the evidence adduced in its proper perspective. By referring to rival pleadings, learned counsel submits that the factum of accident and nature of injuries sustained by the appellant not disputed by the respondent. It is pointed out that the respondent has

denied its liability to pay the compensation with contention that the injuries sustained by the appellant caused due to his own fault and negligence. The fact regarding the crush injury caused to the right leg of appellant resulting amputation of two fingers of toe, period of hospitalization and permanent disablement suffered by the appellant / claimant not disputed by the respondent. In spite of that, the Tribunal has misread the pleadings and evidence and observed that the appellant has failed to prove that he suffered permanent disability on account of injuries sustained in the accident. The Tribunal has overlooked the important evidence in the nature of Medical Certificate produced at Exhibit-19 and 21 to prove the case of the claimant that in the accident he suffered grievous injury which resulted into amputation of toe fingers and resulted in causing permanent disablement to the extent

of 40%. By referring to the overall facts of the case, the evidence adduced in case, learned counsel submits that the amount of compensation claimed by the claimant was too much on lower side. By referring the decision in the case of ***Kumari Kiran Through her father Harinarayan V/s Sajjan Singh and others*** reported in ***(2015) 1 SCC 539***, learned counsel submits that in the facts and circumstances of case the appellant deserves to be awarded compensation of Rs.5,00,000/-.

9. On the other hand, learned counsel for the respondent supported the judgment and award passed by the Tribunal. It is submitted that the respondent has examined Sudhakar Shete, the driver of S.T. Bus. He has categorically deposed that the accident was solely occurred due to negligence on the part of the appellant. He has categorically deposed that the appellant/claimant was

riding the bicycle. He lost the balance. Due to loss of balance, the bicycle fell down near the wheel of Bus. At the time of accident, bus was driven not more than 10 Kms per hour and therefore no question of driving the bus in a extreme and manageable speed on the part of the driver of S.T.bus. Immediately, after the incident, the driver stopped the Bus and admitted the appellant in Primary Health Centre at Sirsala. The Tribunal has duly considered the evidence and reached to conclusion that there was no fault on the part of the driver of Bus and refused to award compensation U/Sec. 166 of the M.V. Act. The appellant has failed to examine the Medical Officer, who alleged to issued permanent disability certificate produced at Exhibit-21.

10. I have carefully considered the submissions advanced in the light of rival

pleadings and the evidence adduced in the case. In my view, the reasons and findings recorded by the Tribunal in dismissing the claim petition filed U/Sec. 166 of the M.V. Act are perverse and not sustainable in law. The evidence adduced in the case has not been considered in its proper perspective. It is quite settled position in law that the claim petition filed under the provisions of the M.V. Act is neither a suit nor an adversarial lis in the traditional sense but it is a proceeding regulated by the provisions contained in Chapter XII of the M.V. Act, which is a complete code in itself. The hyper-technical approach not expected to be adopted in dealing with petitions filed U/Sec. 166 of the M.V. Act.

11. If we consider the rival pleadings then the factum of accident, the injury sustained by the appellant in the accident,

hospitalization of the appellant in SRTM Medical College and Hospital and prolonged treatment provided to the appellant including sustaining crush injury in the accident and registration of crime against the driver of S.T. Bus not disputed by the respondent. What has been disputed is the negligence attributed to the appellant in causing the accident. In this context it is useful to refer the facts pleaded in the written statement in para nos.3, 4 and 5 which reads as under :-

"3. That, on 03/12/2000 one Sudhakar S/o Wamanrao Shelke S.T. Driver of Bus no.MH-20-D/0535 going Parli to Sirsala and Sonpeth when it was ascending Sirsala, bus stand in front of Janimiya Chicken Centre when he was driving his bus, suddenly one bicycle rider suddenly fell from the left side of bus and his right leg came under front left tyre due to which he sustained

injuries to his fingures of the right leg.

4. That, then respondent no.2 and the conductor of the bus brought injured in the Government Hospital and admitted in the Hospital. There was no any damage to the bus or cycle of the injured.

5. That, at the spot where accident took place from the right side of the bus on Motorcycle was parked in front of the shop of cycle, road was narrow and full of traffic. So the driver was driving his bus with a minimum speed at about 10 K.M. per hours even then due to the fault of the said boy the accident took place. The driver of the bus is not responsible for the said accident and he was not at fault."

12. Similarly if we consider the evidence adduced in the case, then the claimant has examined his father Shaikh Salim

Shaikh Jamal. He has categorically deposed that at the time of accident, the appellant was proceeding by the side of road with bicycle in his hand. Since the S.T. bus was coming from front side, the appellant stopped by the side of road. However, Bus gave dash to his son and the wheel of the Bus passed over his right leg, which resulted into causing crush injury to right foot. He further deposed that the appellant was shifted to P.H.C. at Sirsala and later on, shifted to SRTM Medical College and Hospital at Ambajogai. He deposed that the appellant was treated as Indoor patient in said hospital for one month and even after discharge required to take follow up treatment for two years. He deposed that the appellant / claimant is unable to walk due to amputation of right foot and permanent disability has been caused to him in said accident. He categorically deposed that the

accident was occurred due to sole negligence on the part of the driver of S.T.Bus. He has further deposed that the crime was registered against the driver of Bus. In support of oral testimony, the witness has produced the police papers such as F.I.R., spot panchnama, which are at Exhibit-17 and 18. He has also produced the injury certificates at Exhibit-19, Exhibit-20 and Permanent Disability Certificate Exhibit-21.

13. In the cross-examination of PW-1 [the father of claimant] nothing has been elicited so as to discard and disbelieve the testimony of PW-1 on the point of negligence on the part of driver of offending bus as well as injury sustained by the appellant in the accident, treatment offered, period of hospitalization and permanent disability sustained by claimant. The copy of F.I.R. is at Exhibit-17 and spot panchanama is at

Exhibit-18. While appreciating the evidence, the Tribunal has overlooked the documentary evidence. As per spot panchanama the accident occurred on a tar road having 15 to 16 Ft. in width. The bicycle of claimant was found at a distance of about three feet from the right side of the Bus. The Bus was found to be standing facing to north. The blood was noticed at a distance of one feet from the Bus toward eastern direction. Thus the position as depicted in the spot panchanama depicts that the driver of the Bus could have easily passed from `16 ft' wide tar road. The position of bicycle and blood collected on road sufficient to infer that there was impact between bus and the bicycle which claimant was carrying. The facts apparent from panchanama spell out that the driver has not taken requisite care and caution while taking the Bus from crowded locality.

14. The Tribunal has heavily relied upon the testimony of driver of offending Bus to dismiss the claim application of the appellant. The respondent has examined Sudhakar Shete (DW-1) at Exhibit-24. He deposed that on the day of accident at about 1.30 pm, he was proceeding with bus and going from northern side to southern side. He changed his version and again stated that he was proceeding from southern side to northern side. However, spot panchanama reflects that the bus was standing facing towards northern directions. Thus the oral testimony of DW-1 runs contrary to spot panchanama. DW-1 deposed that the width of road on the spot was 10 ft. He deposed that the boy who was coming on bicycle stopped his bicycle. He lost his balance and bicycle tilted towards his bus and fell down suddenly. He immediately stopped the bus to avoid major accident. However, the leg of the boy came

beneath the front side wheel of his bus. He got down from bus and shifted boy in hospital at Sirsala. In cross-examination he admitted that right hand side tyre bus cross over the leg of the boy i.e. claimant. During cross-examination, he changed his version about accident and deposed that left side tyre of the bus pass over the leg of the boy.

15. Thus if we consider the testimony of driver of S.T. Bus i.e. DW-1 then same is not reliable as well as inspires no confidence. DW-1 is an interested person. In natural course no culprit, who is facing criminal prosecution on account of accident, expected to depose contrary to his defence. While scrutinizing the evidence the Tribunal ought to have acted cautiously in placing reliance upon the testimony of DW-1. It was expected on the part of the Tribunal to have scrutinize the evidence of DW-1 in the light

of documentary evidence and more particularly the spot panchanama Exhibit-18. The facts deposed by DW-1 are found contrary to position depicted in the panchanama Exhibit-18. DW-1 has deposed that the width of the road as 10 ft., whereas the spot panchanama mentions that the width of tar road on the spot of accident as 15 to 16 ft. Although the driver of the Bus has deposed that he was proceeding with the bus from northern side to southern side, the panchanama reflects the position otherwise. In the panchanama, the S.T. bus shown to be standing facing towards northern side which means the bus was proceeding from southern side to northern side. Although the respondent has approached with the case that there was no impact between bus and the bicycle on which the claimant was proceeding, the driver of the bus has admitted in his evidence that the leg of the boy came beneath the front side wheel

of the bus. The admission given in the cross-examination clearly establishes that the injury sustained by the claimant was suffered in the accident in question and the wheel of the bus cross over the leg of the claimant and caused crush injury to his right foot.

16. The evidence on record reflects the tendency on the part of DW-1 to change his version. In examination-in-chief, he deposed that the front side of wheel of bus cross over the leg of the claimant. However, in cross-examination he changed his version and stated that the fact deposed to that effect by him in examination-in-chief was wrong and deposed that rear right tyre of the bus cross over the leg of the boy. In that view, the Tribunal should not have placed reliance upon the testimony of DW-1 to hold that the accident was occurred due to sole negligence on the part of the appellant-claimant.

17. The Tribunal has overlooked the fact that the Motor Vehicle Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffers bodily injury or die untimely. The Act has been designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings.

18. Thus if we consider the overall evidence in the light of the spot panchanama then the fact emerges that the accident was occurred on a road having 15 to 16 ft. tar road. There was sufficient space available for the driver to safely pass over the road. The accident was occurred in crowded locality surrounded by shops on both sides of the road. The spot of incident was close to the

bus stand. In that view, it was expected on the part of the driver of the bus to drive the bus with utmost care and caution.

19. The driver of the offending bus has admitted in cross-examination that he had seen the boy coming from opposite direction. If he had seen the boy aged 10 years coming from opposite direction, then it was expected on the part of the driver of the S.T. bus to have taken care while passing through crowded locality. The position depicted in the panchanama, more particularly, the bicycle found to be lying on the road with blood collected on the spot at a short distance from bus clearly depict that there was impact between the bus and bicycle. Only for the reason, no visible damage seen to the bus and the bicycle, the Tribunal should not have inferred that there was no fault on the part of the driver in causing the accident. The

fact that the wheel of the bus cross over the foot of the claimant more than sufficient to establish that the claimant has received injury in said accident due to rash and negligent driving on the part of the driver of the offending bus. In that view, the reasons and findings recorded by the Tribunal to hold that the claimant has failed to prove the rash and negligent driving on the part of the driver not sustainable on the basis of evidence on record. The Tribunal has erred in appreciating the evidence in its proper perspective. The evidence on record is more than sufficient to hold the driver of S.T. bus was solely responsible in causing the accident consequential injury to the right leg of the claimant.

20. If we consider the rival pleadings and testimony of witness examined in the case then the nature of injuries sustained by claimant, the treatment taken in S.R.T.M.

hospital and the consequences suffered by the appellant on account of accidental injuries not in dispute. The Medical Certificate of injury issued by the Primary Health Center Sirsala produced at Exhibit-19 more than sufficient to prove the case of claimant that in the accident in question the claimant had suffered crush injury to his right leg. The certificate Exhibit-19 issued by the Medical Officer, Sirsala record that the appellant found to have suffered crush injury to his foot and same was caused four hours prior to examination by Medical Officer. It is also noted in certificate Exh.19 that the patient i.e. the claimant has been referred to the SRTM Medical College and Hospital, Ambejogai. Thus the certificate issued by Primary Health Centre, Sirsala more than sufficient to prove that appellant had sustained crush injury to his foot in motor vehicle accident occurred on 03.12.2000.

21. The permanent handicapped certificate produced at Exhibit-21 dated 16.03.2001 issued by Medical Officer, Primary Health Center at Sirsala record that the appellant sustained crush injury to right foot to the extent of 40%. The Tribunal has refused to act upon said certificate for the reason that the claimant has not examined the Medical Officer and signature of the Medical Officer endorsed over the photograph indicate that the Medical Officer has only attested the photograph of appellant. The Tribunal has observed that the said certificate appears to be issued for the purpose of securing scholarship as Orthopedically handicapped person.

22. While appreciating evidence in case, the Tribunal overlooked the cardinal principles of appreciation of evidence that fact asserted by one side and not disputed by

other side, the party asserting such facts not required to prove the existence of such fact. In absence of any dispute that the appellant suffered crush injury to his leg in the accident dated 03.12.2000 and claimant has sustained permanent disablement on account of such accidental injury, the insistence of the Tribunal to seek proof of such fact is not in consonance with settled principles of law. Even assuming that the certificate Exhibit-21 was issued for any other purpose and same was not issued in prescribed proforma i.e. Form Comp 'B' as provided under Motor Vehicles Rules still the Tribunal could not have ignored said certificate. The certificate Exh.21 cannot be discarded for the reason that the Medical Officer has endorsed his signature across the photograph. The existence of signature over the photograph itself not sufficient to draw inference that Medical Officer has endorsed

his signature only for the purpose of attestation of photograph of the claimant. In that view, the reasons and findings recorded by Tribunal are not legally sustainable in law.

23. In view of the oral and documentary evidence on record, I have no hesitation to hold that the appellant has proved that in the accident dated 03.12.2000 the appellant / claimant had suffered crush injury to his right leg which resulted into amputation of two fingers of toe of his right leg and it resulted in permanent disability to claimant. The injury sustained certainly affected the functional ability of the appellant to some extent. The 40% disability mentioned in certificate Exh.21 not refers to 40% functional disability of claimant. It refers to 40% disability as to normal functioning of bones, muscles and joint of particular organ

i.e. foot of right leg of the claimant. In the facts and circumstances of case, it can be inferred that appellant has suffered permanent disability affecting the functional disability to some extent of right leg.

24. In view of the conclusion to which I have arrived at that the accident was occurred due to sole negligence on the part of the driver of S.T. Bus and the appellant has proved that in the accident he suffered crush injury to his right leg, which resulted in causing permanent disability to some extent to right foot and leg the claimant is entitle to receive compensation U/Sec. 166 of the M.V. Act.

25. Now the next question poses for the consideration is how much compensation the appellant is entitled in the light of injury sustained in accident. The appellant has

claimed the *lumsun* compensation of Rs.1,00,000/- towards pecuniary and non-pecuniary loss on account of accidental injuries sustained in the accident. At the time of accident, the appellant was 10 years old and studying in 4th standard. He sustained injuries to his right leg at the young age of 10 years. Father of appellant examined in the case has categorically deposed that the appellant remained in hospital as Indoor patient for one month and required to undergo prolonged treatment for two years as Outdoor patient. He has further deposed that due to crush injury and amputation of fingers of the toe, the appellant is unable to sit, stand and walk properly.

26. In the instant case, the case has been conducted in a most casual manner on the part of claimant. Although the compensation has been claimed as Rs.1,00,000/-, the

claimant has failed to produce documentary evidence as to the expenses incurred for treatment of the claimant. So also the basic documents such as Discharge Card etc., are also not produced. It was expected on the part of the Advocate representing the claimant to have properly presented the case of the appellant-claimant so as to enable the Tribunal to properly assess and award proper compensation. For the fault on the part of the Advocate representing the claimant, the claimant should not be suffered. In that view, the compensation deserves to be assessed on the basis of undisputed facts emerged from the record and more particularly the oral testimony of the father of the claimant. The evidence on record clearly make out that the claimant has suffered crush injury to his foot of right leg and two fingers of the foot appears to be amputated. The claimant was aged 10 years at the time of

accident, studying in 7th standard. He was treated in Government Medical College and Hospital. The nature of injury and prolong treatment the claimant has undergone in Government Medical College and Hospital, Ambajogai can be taken into consideration in awarding just and proper compensation to the claimant. It can be safely inferred that on account of accidental injury the claimant has suffered much pains and suffering and required to live future life with disability.

27. In the light of facts and circumstances of the case and the evidence on record, the lumpsum compensation of Rs.1,00,000/- claimed by the claimant cannot said to be excessive. The claimant has undergone pains, suffering and agony on account of crush injury caused to his leg. The father of appellant must have incurred some expenses though treated in Government

Medical College. He must have incurred expenses in attending the claimant in hospital, the transportation, providing special diet etc. On that count the compensation of Rs.1,00,000/- claimed by the appellant appears to be just and proper compensation to be payable in the facts and circumstances of the case. Out of Rs.1,00,000/-, the amount of Rs.25,000/- already paid to the claimant under no fault liability, which can be adjusted towards the compensation to be payable to the claimant. Thus in absence of any documentary evidence produced in respect of permanent disability, expenditure incurred, the compensation of Rs.1,00,000/- (inclusive of N.F.L.) deserves to be awarded to the appellant-claimant as just and proper compensation.

28. In the result, the appeal deserves to be allowed. Accordingly the following

order is passed :-

ORDER

- (i) The appeal is allowed.
- (ii) The claim application filed by the appellant-claimant under section 166 of the M.V. Act is allowed with costs.
- (iii) The respondent is directed to pay the compensation of Rs.1,00,000/- (inclusive of Rs.25,000/- awarded as No Fault Liability) with interest @6% p.a. from the date of Petition till its realization.
- (iv) The modified award be drawn in terms of order in appeal.
- (v) The appeal disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA