

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.1298/2008

Maharashtra State Road Transport
Corporation, through Divisional
Controller, Yavatmal Division,
Arni Road, Yavatmal.

.....APPELLANT

...V E R S U S...

Nilkanth Mukundrao Mohitkar,
Aged about 49 years, Occ. Nil,
r/o Gurunagar, Ward No.5,
Near Janta High School, Wani,
Dist. Yavatmal.

...RESPONDENT

Mr. A. S. Mehadia, Advocate for appellant.

CORAM:- V. M. DESHPANDE, J.
DATED :- 25.11.2021.

ORAL JUDGMENT

1. This appeal is filed by the Maharashtra State Road Transport Corporation (For short “MSRTC”), under section 30 of the Workmen’s Compensation Act, 1923 (For short the “Act”), challenging judgment and award passed by Commissioner under Workmen’s Compensation Act, Yavatmal dated 20.06.2008 in Workmen’s Compensation Case No.5/2006 filed by respondent. By

the impugned award, learned Commissioner allowed the application filed by the respondent herein claiming compensation from the appellant.

2. By the impugned award the appellant was directed to pay an amount of Rs.2,14,108/- together with interest at the rate of 12% per annum from the date of application till realization as per Section 4 and 4A of the Act. The appellant was directed to pay further amount of Rs.1,07,094/- as 50% penalty on amount of compensation as per the provisions of Section 4A (3-b) of the Act.

3. This appeal was admitted by this Court on 17.10.2008 on the following substantial question of law:

“As to whether penalty in the instant case could have been imposed in view of the fact that the appellants proposed to take a disciplinary action against the respondent driver of the appellant”

4. Heard Mr. Mehadia, learned counsel for the appellant. Learned counsel for respondent chose not to appear and participate in the hearing when the appeal was called for hearing. The facts which are not in dispute are as under:

(i) Appellant was employer of respondent and respondent was working as driver from 20.05.1987.

(ii) Respondent was driving S.T. bus having registration No. MH-12/UA-9962 on 07.07.2001 on Yavatmal to Chandrapur rout.

(iii) Near Parsheoni fata, accident took place i.e. there was head on collusion between S.T. bus driven by the appellant and one truck, resulting into respondent suffering various injuries.

(iv) Respondent was moved to Government Hospital, Wani, thereafter to Government Hopsital, Chandrapur and from there he was shifted to Suretech Hospital, Nagpur.

(v) At Suretech Hospital, respondent was operated on 2-3 occasions. He was operated for injuries caused to him on right leg and rod was inserted in his leg. He remained as an indoor patient for 2 ½ months. Thereafter, though he was discharged, his treatment continued.

(vi) An offence was registered against the respondent in respect of accident and case was registered as Criminal Case No. 1198/2001 under the relevant penal provisions.

(vii) Respondent was acquitted from the said criminal case by the learned Judicial Magistrate First Class, Wani and the said order of acquittal attained finality.

(viii) Respondent was given disability certificate and he became permanently disable to the extent of 50%.

(ix) Medical Officer of Shri Vasantral Naik Government Medical Hospital, Yavatmal issued certificate declaring him unfit for driving work. Therefore, he lost his job as driver and ultimately he was discharged from duty by appellant on 06.04.2004.

5. In the aforesaid admitted background, the respondent approached to the Court under the Workmen's Compensation presided over by Judge, Labour Court, Yavatmal by filing W.C.A. No.5/2006. The application was contested by appellant by filing written statement and main plank of resistance to the application on behalf of the appellant was that accident occurred due to rash and negligent driving of the respondent. Parties entered into the witness box. Learned Commissioner formulated following issues.

Sr.No	ISSUES	FINDINGS
1.	Does applicant proved that he was working as a driver on S.T. Bus No.MH-12/UA-9962 belonging to the non-applicant and he was getting Rs.7240/- per month towards wages?	Affirmative
2.	Does applicant proved that on 07/07/2001 he met with an accident out of and during the course of employment and sustained permanent disablement?	Affirmative, so far as permanent disablement is concerned, he sustained 50% disablement.
3.	Does applicant proved that on the relevant date of the accident, he was aged about 42 years?	Affirmative.
4.	Whether applicant is entitled to claim Rs.3,88,380/- towards compensation, 50% penalty and interest @18 p.a. from the non-applicant as claimed?	Affirmative, he is entitled to compensation of Rs.2,14,188/- with interest @ 12% p.a. and penalty of Rs.1,07,094/- from non-applicant.
5.	What order?	As per final order

After appreciating the pleadings, documents and evidence as brought on record by the parties, the impugned award was passed.

6. According to Mr. Mehadia, there is an error apparent on the part of learned Commissioner while granting compensation in favour of the appellant inasmuch as the accident took place due to the rash and negligent driving on the part of the respondent.

Therefore, he himself was responsible for the injuries caused to him. He, therefore, prayed that appeal be allowed in terms of the substantial question of law that was formulated.

7. In view of the admitted position as pointed out in the preceding paragraphs, it is clear that criminal case was registered against respondent under relevant provision of the IPC for causing accident as it was the case of the prosecution that the respondent was driving the vehicle negligently. Needless to mention, it is an admitted position that respondent was acquitted from said criminal case and charge. Mr. Mehadia, learned counsel, fairly submitted that neither prosecution nor M.S.R.T.C. challenged said order of acquittal. Resultantly, finding recorded by learned Magistrate that the respondent was not driving the vehicle rashly or negligently, has to be accepted.

8. Be that as it may, even in compensation proceedings, issue of rash and negligent driving was not framed by the learned Commissioner, though from the written statement it could have been. However M.S.R.T.C did not file any application before learned Commissioner for reframing or recasting the issues. In

that view of the matter, I am of the view that plea of rash and negligent driving as put forth by the M.S.R.T.C. was abandoned.

9. It is an admitted position that due to accident, respondent lost his job as a driver. Scope of appeal under Section 30 is limited only to the substantial question of law on which the appeal was admitted.

10. In view of the fact that prior notice was already given to the M.S.R.T.C. about the penalty to be imposed, in my view, merely because disciplinary action was proposed against the respondent that will not absolve the M.S.R.T.C. from paying penalty, if amount of compensation is not paid during the stipulated period.

11. There is no merit in the appeal. Hence, the appeal is dismissed. Needless to mention, the respondent will be entitled to withdraw the amount of compensation and penalty from the office of the Workmen's Compensation, if it is not already withdrawn.

JUDGE

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