

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 FIRST APPEAL NO. 1802 OF 2011

Divisional Controller,
Maharashtra State Road Transport Corporation, Divisional Parbhani,
Dist. Parbhani
Through Divisional Controller

...APPELLANT
[Ori.Respondent]

VERSUS

- 1] Shridhar S/o. Kashiram Sangle, ...RESPONDENTS
Age-39 years, Occu- Agriculturist, [Ori.Ptnr]
R/o. Pardi, Tq. Aundha,
Dist. Hingoli,
- 2] Rustum S/o. Kishanrao Sangle,
Age-Major, Occu-Agriculturist and Business,
R/o. Pardi [Savali], Tq. Aundha,
Dist. Hngoli
- 3] United India Insurance Co. Ltd.
Through Its Branch Manager,
Dayawan Complex, Station Road,
Parbhani

Mr. Anand D. Wange, Advocate for the appellant
Mr. Sachin S. Deshmukh, Advocate for the respondent No.1
Mr. S. V. Kulkarni, Advocate for the respondent No.3
Respondent No.2 is absent though served.

CORAM : VINAY JOSHI, J.

RESERVED ON : 13-01-2022

PRONOUNCED ON : 17-01-2022

JUDGMENT:

. This is an appeal arising out of the judgment and award passed by the MACT, Hingoli, in MACP No. 346 of 2007, whereby the tribunal has granted total compensation of Rs.11,20,000/- alongwith interest at the rate of 6% p.a. It was a case of head on collusion in between two vehicles namely State transport bus and jeep. The Tribunal has saddled the liability on both the vehicles to the extent of 50% each. Being aggrieved by the said decision, the appellant i.e. owner of ST bus has challenged the finding of the Tribunal on both counts i.e. negligence and assessment of compensation amount.

2. The facts in brief, are as such that:

a] on 20-09-2007 the respondent No.1 (Petitioner/claimant) was traveling as a passenger in jeep bearing registration No. MH-22/7665. While jeep was passing from the Kazidara Pati on Hingoli to Parada road at that time the State transport bus

bearing registration No. MH-40/9869 came in high speed from the opposite direction and gave dash to the jeep. In the said accident jeep driver died on the spot whilst the petitioner sustained severe bodily injuries. Initially he was shifted to Rural Hospital then to the Hospital at Parbhani and finally he took entire treatment at Seth Nandalal Dhoot Hospital, Aurangabad. The petitioner was indoor patient from 23-09-2007 to 11-10-2007. He sustained multiple bodily injuries over his head, neck and spine etc. Particularly, he sustained injuries like CT cervical spine with fracture aut pat C7 body, Fracture inf.anticulating facet of C6 vertebra on right side with ante sublacal of Co over C7 vertebra. The petitioner has spent Rs. 1,50,000/- on his entire medical treatment.

b] It is the petitioner's case that he was serving as a Supervisor with M/s. Ambarwadikar & Co. Engineers and Contractors, from which he was earning Rs.8,000/- per month towards salary. In the said accident, the petitioner sustained 50% permanent disablement. However, due to spinal cords injury, the petitioner was unable to work and thus, it was 100% loss of earning capacity. Since the accident

took place as a result of rash and negligent driving of the ST bus driver, the police filed charge-sheet against him. Being the case of composite negligence the petitioner claimed the compensation from both of them.

c] The appellant (Ori. Respondent No.1)-MSRTC resisted the claim before the Tribunal by filing the written statement. Likewise insurer of jeep also put its resistance. Precisely, it was the defence of MSRTC that the accident was result of sole rash and negligent driving on the part of the jeep driver. It is contended that the tribunal erred in assessing the quantum of compensation. According to the appellant though the petitioner sustained 50% permanent disablement, the tribunal has wrongly considered 100% disability while assessing the compensation.

3. Heard both sides and perused the entire evidence. The petitioner himself has led evidence on affidavit about the accident. It is the petitioner's evidence that at the relevant time the ST bus came in high speed and gave forceful dash to the jeep. Though the appellant has examined bus

driver however, during cross-examination he admits that it is a case of head on collision. After the accident police have registered the crime against the bus driver as well as charge-sheet has been filed. Admittedly, the petitioner was occupant of jeep meaning thereby, it is a case of composite negligence. Since it was head on collision, the tribunal has rightly assessed that both tortfeasors are equally liable to pay compensation.

4. On the point of quantum, it has come in the petitioner's evidence that he was earning Rs.8,000/- towards salary as a Supervisor. The salary certificate is produced on record. Having regard to the fact that the petitioner was not qualified for said work, the tribunal has assessed the petitioner's income to the tune of Rs.5,000/- per month which is just and reasonable. Though there was 50% permanent disability, the tribunal has considered the 100% disability while calculating the compensation. Perused the evidence on the point of permanent disability. The petitioner has produced the permanent disablement certificate (Exh.31 Form Comp 'B') and Discharge Card (Exh.27) on record. It reveals that the petitioner has sustained grave

injuries to his spine which is described in the discharge card. The petitioner has examined treating doctor Dr. Uday Phute. He has detailed the nature of injuries.

5. The appellant's learned counsel has attracted my attention to the cross-examination of doctor wherein he admits that permanent disability can be reduced after taking future higher treatment. However, on the basis of mere probability, it cannot be assumed that disability would be reduced. Pertinent to note that the injuries were of severe nature which resulted into loss of balance. The Hon'ble Supreme Court in the case of Raj Kumar Vs Ajay Kumar reported in 2011(2) Mh.L.J.569 ruled that while assessing the compensation in injury claim, the tribunal has to assess the effect of permanent disability on the earning capacity of injured. Percentage of permanent disability and loss of earning capacity are two different factors. The petitioner was working as a Supervisor in construction company. Naturally, due to spinal cord injury he may not be in position to stand for longer period. Having regard to the nature of the work of the petitioner it has totally affected on his

earning capacity. Impact of injury is quite severe and therefore, the Tribunal has rightly considered that it is a case of 100% loss of earning capacity.

6. In view of that on re-examination of entire material, it is evident that the Tribunal rightly assessed the quantum of compensation and saddled the liability on both wrong doers. In view of that appeal calls no interference. Hence, the appeal stands dismissed.

7. The amount of compensation lying with this court if any, be transmitted to the Tribunal.

[VINAY JOSHI, J.]