

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

FIRST APPEAL NO. 1263 OF 2004

The Divisional Controller
Maharashtra State Road
Transport Corporation,
Division – Ahmednagar,
District - Ahmednagar

... Appellant
[Orig. Opponent]

Versus

Shaikh Rajuddin Alias
Khairu Alam, Age: 32 years,
Occu: Goldsmith,
R/o: Kopalgaon, Dist. Ahmednagar

... Respondent
[Orig. Applicant]

...

Mr. M. K. Goyanka, for the Appellant
Mr. N. C. Garud , Advocate for Respondent-sole

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10.02.2023

PRONOUNCED ON : 20.02.2023

JUDGMENT :

1. The appellant/MSRTC approaches this Court under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as ‘the Act’ for short], thereby assailing the judgment and award dated 21.04.2004, passed by the Motor Accident Claims Tribunal, Kopargaon, District Ahmednagar, in Motor Accident Claim Petition (MACP) No.415/2002.

2. It is the contention of the appellant that respondent/claimant was traveling in an auto rickshaw at the time of accident. The rickshaw driver was overtaking the MSRTC Bus. He suddenly applied the brake, resultantly, the Bus collided on the rear portion of the rickshaw. The accident took place due to sole negligence on the part of the rickshaw driver. However, the Tribunal has recorded the findings of negligence against the Bus driver. It is further contention of the appellant that the Tribunal has erroneously accepted the case of the claimant regarding 30% permanent disablement and consequential loss of earning capacity. It is further contention of the appellant that excessive compensation has been assessed by the Tribunal.

3. The accident in question took place on 02.07.2000. An information of accident was given by the Head Constable Rajput to the Police Station and accordingly, a FIR had been lodged against him. After due investigation, charge-sheet is filed against the ST driver. A copy of FIR (Exhibit-45) and the charge-sheet (Exhibit-47) are admitted in evidence. Perusal of the documentary evidence would show that the MSRTC Bus had given dash to the rickshaw from rear side.

4. Learned advocate Mr. M. K. Goyanka appearing for the appellant would submit that in the facts and circumstances of the case, Tribunal has wrongly fixed the entire responsibility of the accident on the

Bus driver. He would argue that the rickshaw driver had major contribution in the cause of accident. The Tribunal ought to have apportioned liability in proportion of the negligence of drivers. He would further argue that the claim is bad for non-joinder of necessary party. The claimant ought to have added owner and insurer of the rickshaw as party to the claim petition. The liability of the appellant could have been restricted to the extent of negligence of the Bus driver. He urge that the Tribunal has erroneously fixed entire liability to pay the compensation against appellant/MSRTC. He would further submit that the assessment of compensation made by the Tribunal is without supporting evidence. He would submit that neither the claimant suffered permanent disablement, nor has he suffered loss of earning.

5. Learned advocate Mr. N. C. Garud appearing for the respondent supported the judgment/award passed by the Tribunal. He would submit that the Tribunal has recorded findings in tune with oral and documentary evidence recorded before the Tribunal. He would submit that the Tribunal has assessed just and reasonable compensation. The judgment/award passed by the Tribunal do not call for interference.

6. I have considered the submissions advanced by the learned advocates appearing for both the sides. It is trite that when two vehicles involved in the accident and drivers of both the vehicles have contributed

in the cause of accident, the claimant/injured can exercise his choice to prosecute his remedy seeking compensation under the provisions of the Act against either joint tortfeasors or he may choose to claim compensation from both of them.

7. The Hon'ble Supreme Court in the matter of **Khenyei vs New India Assurnace Company Limited & Ors.** reported in **2015(9) SCC 273** has held that it is not necessary for claimant to add owners and drivers of all vehicles involved in the accident. In such cases, the principles of composite negligence would apply and claimant may prosecute his remedy against any one of joint tortfeasors.

8. In the present case, the FIR has been registered against the Bus driver. The claimant was a passenger in the auto rickshaw. The Bus gave dash to the rickshaw from rear side. Accident could not have occurred without contribution of bus driver. In the factual scenario, claimant has rightly exercised his choice of prosecuting remedy against respondent/MSRTC seeking the compensation. Therefore, the finding recorded by the Tribunal on the point of negligence do not call for any interference.

9. So far as the assessment of compensation is concerned, the claimant has suffered two fractures to his right leg and hands. He was under medical supervision from 02.07.2000 to 18.08.2002. The claimant

relied upon evidence of Dr. Yadkikar who deposed about injuries suffered by the claimant. Though he admits that the fracture injuries were treated successfully, he states that the claimant has suffered shortening of right lower limb and second fixed flexion deformity of right knee. He advised for removal of implant used for subtrochanteric fracture in a neck and femur reoperation to correct the shortening. He states that the claimant has shortening of two and half inch to right leg. The permanent disability is assessed to the extent of 60%. The Tribunal has rightly considered the loss of earning to the extent of 30% considering claimants occupation of goldsmith. I do not find infirmity in findings of Tribunal regarding assessment of permanent disability and loss of earning capacity. The findings are based on medical evidence and principles of assessment laid down by Supreme Court of India in the matter of **Raj Kumar v/s Ajay Kumar & Anr.** reported in **2011 (1) SCC 343**.

10. The Tribunal considered notional income of the claimant to the tune of Rs.3000/- per month and the loss of earning to the extent of 30%. The multiplier of 17 is appropriately applied and compensation towards loss of future earning is assessed to Rs.1,83,600/-. The Tribunal has relied upon the medical bills placed on record worth Rs.61000/-. The compensation of Rs.30,000/- is assessed for future medical treatment and passed the total award of Rs.3,00,000/- along with 6% interest till the date of realization of the award.

11. The assessment of compensation appears to be just and proper and in the tune with the established principles for assessment of compensation.

12. In the light of the aforesaid discussion, there is no merit in appeal. Hence, the appeal is dismissed with costs.

(S. G. CHAPALGAONKAR, J.)

Sameer